

Investigation and Review of the *Construction Industry Training Fund Act 1993 (SA)*

Final Report

April 2023

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Disclaimer

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Introduction

The *Construction Industry Training Fund Act 1993 (SA)* (Act) established the Construction Industry Training Board (CITB) to improve the quality of training in South Australia's building and construction industry.

Three decades later, the Board plays an important role in providing financial support for the skill development and training of the building and construction industry workforce in the State.

The Act imposes a levy on building and construction works valued at more than \$40,000. The levy of 0.25% on the cost of most building and construction (abbreviated in this report to "CITF levy" or "levy") is paid into the Construction Industry Training Fund (Fund), which is managed by the Board and which at 30 June 2022 possessed total equity of \$28 million.

The 1993 Act after being amended in 2019 also required that the related amendments be reviewed, specifically, investigation of the success of the Board in the exercise of its functions and powers and the appropriateness of the levy, which is the basis of this Review.

This Review and accompanying report, by PEG Consulting with Department for Education (Department) support, was conducted between November 2022 and April 2023. More than 100 stakeholders from the building and construction industry, related sectors and government, in addition to current and past CITB members, provided feedback in one-on-one sessions and through surveys on the issues in the Terms of Reference set out on page 11. A total of 45 submissions or survey responses were received, in addition to individual consultations.

In line with the requirements of the Act, the report is presented to the South Australian Minister for Education, Training and Skills, who will submit the report to both Houses of Parliament.



Executive summary



The CITB plays important roles in the skill development and training of the building and construction industry workforce in South Australia. The CITB and Fund are an industry-specific initiative for housing (residential), commercial and civil construction.

The Board is responsible for a substantial fund (around \$28 million in total equity at 30 June 2022). The industry feels an 'ownership' of the Fund and the Board's representative nature is important to stakeholders.

In general terms, this Review makes recommendations that seek to improve:

- the composition of the Board
- the clarity of the Act and the robustness and ongoing viability of the scheme (including compliance)
- how and on what basis the Board makes its decisions.

The Review has examined the Board's performance across a range of criteria, using evidence derived from the CITB, government, stakeholders and previous reviews of the Board and the Act.

The CITF levy is designed so that it is transparently a cost imposed on those engaging building and construction services. This means that, ultimately, the payers of the levy are generally homeowners, businesses owners, not-for-profits and government.

While this appears to work in many cases, the way in which the levy is calculated and paid is in fact fraught with difficulties, including the fact that the levy that is payable at the start of a project, based on an estimated project value (that then may require reconciliation); and a lack of clarity as to who is responsible for payment (at both the estimation and reconciliation points). Notably, a significant number of levy payments effectively rely on an "honour system". If a building or construction project does not follow a traditional building approval pathway, the capacity of the CITB to ensure that the levy is paid is sorely tested. A primary recommendation of the Review is for an alternative, more robust collection mechanism.

The Fund is substantial and is ultimately paid by users of building and construction services in South Australia, not the building and construction industry itself. It is appropriate that the Board is governed by members who have relevant skills and knowledge to oversee a large fund. The 2019 amendments to the Act have been found to have jeopardised this.

The Review found that the Act should be based on Objects that guide the Board and administration of the Fund. Changes to Board membership are necessary to ensure that the Board has appropriate skills, knowledge and experience, as well as connections with the different representatives of the industry and training sectors. Membership changes will enable the Board to be primarily skills-based, but also include employee, employer and ministerial nominations. Additional recommendations seek to strengthen Board governance, integrity and engagement with stakeholders. Recommendations 1-9 aim to achieve these outcomes.

The Review also found that the administrative and compliance burden of paying the levy at a threshold of a \$40,000 project value is disproportionate to the compliance cost; that the threshold should be at least \$100,000 and be regularly reviewed. This change would address compliance issues related to works of lesser value that do not require building approval, and decrease red tape and cost for more than 3,500 projects that are largely undertaken by small businesses, sole traders and homeowners. The threshold increase would result in a loss of revenue for the CITB of less than 3% - a loss potentially offset by lower administration costs from the resultant 20% reduction in payments to be processed, and by other recommended reforms relating to exemptions and compliance.

The definition of a "project owner" (who is responsible for levy payment) should be clearer and not allow transfer to subcontractors or those only partially involved in a project. The project owner, for the purposes of levy payment, should be the individual delivering all, or substantially all, of the construction project;

if such a person is not engaged, then the person who will receive benefit from the construction should be responsible for levy payment. For government projects, the department or agency responsible for the project (commonly the South Australian Department for Infrastructure and Transport) should be responsible for levy payment. This clarity will substantially improve compliance and the administration of the levy, along with a number of other recommendations detailed throughout the report.

The role and influence of government in the CITB's activities is under-recognised. Government projects over the next four years will likely represent more than 40% of total levies collected. Government invests more than the CITB, by about 2:1, into training and skill development of the building and construction industry. Government policy priorities, infrastructure investments and planning, and data sources have a material impact on CITB activities. Recommendations 4, 13, 21, 22 and 30 reflect that benefit would be gained from greater engagement with government.

The exemptions for projects that use the construction industry workforce and would otherwise be captured by the levy should be narrowed, subject to consultation with local councils, renewable and mining industries (recommendations 23 and 24). The Review found that the identity of the employer of a construction workforce for a project, or the person who will benefit from the project, should not determine whether construction activity is leviable. If a project is to be delivered by a construction workforce, to deliver the same output as would ordinarily be captured by the levy, then the project should be leviable. The justification for an exemption is not clear when the purpose of the Act is considered.

Other changes may also support the intended outcomes of the Act. They include enabling longer term, holistic workforce planning through committees, the abolishment of hypothecation of the Fund, a longer training plan cycle, and decision-making processes based on data and evidence. These along with other administration and operational improvements are detailed in recommendations 1, 7, 10, 26 and 27.

The reviewers noted that stakeholders largely regard the Board and its purpose positively. Many respondents, such as the Master Landscapers of South Australia and Architects, sought more involvement. The reviewers suggest that increased stakeholder participation would enrich the CITB's outcomes.

The Review process attracted more than four times the number of submissions than any previous review of the Act. Implementation of the recommendations outlined in this report will benefit from ongoing consultation with the sectors, and, where available, further data modelling and research. However, the Review was required to meet timeframes enshrined in the legislation that limited engagement and the resolution of every issue.

The building and construction industry is a very significant contributor to the South Australian economy, and the sector is invested in the CITB's success. The reviewers' recommendations aim to maximise the effectiveness and efficiency of the Board and its capacity to support the industry and its individual stakeholders.

Recommendations

OBJECTS, BOARD COMPOSITION AND FUNCTIONS 18

Recommendation 1 – The Act should include an Objects section so that the Board’s purpose and the priority for the Fund’s administration is clear. The section should include that the Fund is appropriately administered; that it is applied to deliver quality training that addresses skills shortages, entry level training and upskilling; and that Board decision-making is based on data and evidence. 18

Recommendation 2 – The Act be amended so that Board appointments collectively satisfy a skills matrix to ensure Board duties can be appropriately discharged. To ensure the Board also has the appropriate industry knowledge and representation, these appointments should be drawn from a balance of employee, employer and Ministerial nominations. There should be no increase in the total number of members. 20

Recommendation 3 – Stakeholder views and observations, as captured in this report, should guide the design of the Board’s skill matrix and knowledge requirements. 20

Recommendation 4 – When selecting Ministerial nominees the Minister should consider the objective of supporting intelligence and information sharing between government and the CITB, given that government is the major customer of the industry. 20

Recommendation 5 – Provisions in the Act regarding disclosure of interest and duties of honesty, care and diligence be reviewed when the Act is amended to ensure they remain current and appropriate to adequately deal with the situations that may arise for the CITB. The Minister should consider potential conflicts of interest when nominating appointees to the Governor. 20

Recommendation 6 – The Board provide and implement clear member induction and charter information so responsibilities are recognised and understood. 20

Recommendation 7 – Board members have access to contemporary data, research and intelligence for informed decision-making, including integrated whole of sector data modelling. 20

Recommendation 8 – As the Board is presently comprised, there is no need to appoint deputy Board members. The exception is if there is only one appointee fitting the criteria under s 5(1a)(a) and (b). However, if the Act is amended so that Board members meet skills matrix and sector representation, there may be reason to appoint deputy members to mirror the Board composition. 32

Recommendation 9 – Section 13 of the Act be amended to require the Board to consult with its Committees in the formulation or amendment of its training plan. 33

Recommendation 10 – Section 13(2) of the Act be amended to require a cross-sector workforce planning committee. 33

Recommendation 11 – Section 10 of the Act be amended to permit the Minister to approve allowances or expenses of Committee members. 33

LEVY	36
Recommendation 12 – The Minister investigate the benefits of a more robust, alternative levy collection model.	36
Recommendation 13 – The Act require for non-government projects the project owner be defined as the person/body engaged to deliver all, or substantially all, of the construction project. Only in circumstances where, at the time of levy payment, no person or body has been engaged to deliver substantially all of the project should the project owner definition default to the person benefiting from the construction project. For government projects, the project owner should always be the government agency responsible for delivering the project.	43
Recommendation 14 – The \$40,000 levy threshold be lifted to \$100,000, with no change to the levy rate of 0.25%.	44
Recommendation 15 – The threshold at which the levy is payable be adjusted for CPI every three years via the Regulations; and the reference under section 23 (Exemptions) to \$15,000 be removed.	44
Recommendation 16 – GST should be excluded from the calculation of the project value for the purposes of the levy.	44
Recommendation 17 – The methodology for calculating the value of building and construction work under clause 1 of Schedule 1A be reviewed and if anomalous results are found depending whether the project value is derived under Schedule 1A, clause 1(a) or (b), this be addressed through appropriate amendment.	44
Recommendation 18 – Investigate inclusion of a definition of “professional fees” for the purposes of Schedule 1A. In particular, clarify whether professional fees must solely relate to building and construction work or can also include project-related design work, project/contract management, or the supervision of construction work by in-house staff or consultants. The Board should work with relevant professional bodies to determine whether a definition is more appropriately inserted into the Act or developed as Board policy.	44
Recommendation 19 – The Board should consider undertaking a compliance and education campaign with local councils to ensure consistent awareness and application of the Act’s requirement that building approval is contingent on proof of levy payment.	50
Recommendation 20 – The Board’s functions include oversight and compliance of revenue collection for the Fund, supported through application of CITB resources.	50
Recommendation 21 – Government work with the CITB to introduce transparent reporting and reconciliation options for construction industry projects that are not captured by the usual building approvals process.	52

Recommendation 22 – The CITF Act and any other relevant legislation be amended to provide:	52
<ul style="list-style-type: none"> • that the levy for government building and construction projects is payable by the government agency responsible for its delivery (including those assessed by certifiers) • that the levy for State Planning Commission assessed projects is paid before approval is issued by the State Planning Commission; and • that any approving authorities for building and construction projects under other legislation should also require evidence of levy payment before issuing approval. 	
Recommendation 23 – Subject to consultation, remove the exemptions in:	56
<ul style="list-style-type: none"> • Regulation 13(3) relating to main or core turbines or generators installed at power stations involved in the generation of electricity for the State’s power system; and • Schedule 1, clause 2, that exclude maintenance or repair work by a self-employed person or their employee where their principal business is not in building and construction. 	
Recommendation 24 – Government review the exemption for civil works associated with mining that relate to:	56
<ul style="list-style-type: none"> • pipeline infrastructure used in the production and processing and the repair of such infrastructure • sealed haul roads and tracks • maintenance of airstrips and landing pads. 	
ALLOCATION OF THE FUNDS AND THE TRAINING PLAN	63
Recommendation 25 – The Act be changed to make it clear that the Fund can be applied to attraction and retention activities.	63
Recommendation 26 – The hypothecation requirement be removed.	63
Recommendation 27 – The annual planning cycle dictated by the Act should be replaced by three-year rolling reviews of the overall strategic direction developed through the CITB’s investment decisions, and include the ability to trigger annual adjustments and reallocation of funds.	71

FURTHER MATTERS

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Recommendation 28 – The Act be reviewed at least every five years. The Minister should be required to table a report of the review within the customary number of sitting days. The review should not be statutorily required to be completed within six months.

73

Recommendation 29 – The Act be amended to separately identify the Board and the administration of the organisation.

73

Recommendation 30 – In relation to the use of public service employees, the Act should reflect the *South Australian Skills Act 2008 (SA)* to enable more integrated and complementary connections between the Board and government.

74

Recommendation 31 – When the Act is amended consideration should be given to enhancing the Board’s debt recovery powers.

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Part 1: Context

This Review is a requirement of section 38 of the *Construction Industry Training Fund Act 1993 (SA)* (as amended):

1. The Minister must, as soon as practicable after the third anniversary of the commencement of the *Construction Industry Training Fund (Board) Amendment Act 2019*, appoint an independent person to carry out an investigation and review concerning the amendments made to this Act by the *Construction Industry Training Fund (Board) Amendment Act 2019*.
2. The investigation and review under subsection (1) must include the following matters relevant to the amendments made to this Act by the *Construction Industry Training Fund (Board) Amendment Act 2019*:
 - a. the effectiveness of the Board in the exercise of its functions and powers;
 - b. the attainment of the objects of this Act.
3. The person appointed under subsection (1) must present to the Minister a report on the outcome of the investigation and review within 6 months after the person's appointment.
4. The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Terms of Reference

The Terms of Reference for this Review are as follows:

CITB composition, administration, and operation

Concerning the amendments made to the Act by the *Construction Industry Training Fund (Board) Amendment Act 2019*:

- How effective is the CITB, as currently comprised and administered, in attaining the objects of the CITF Act through the exercise of its functions and powers?
- What opportunities exist to support the achievement of these objects in relation to:
 - the composition of the CITB
 - the staffing of the organisation
 - other governance or operational arrangements?

Levy

- Is the current levy rate of 0.25% of the estimated value of building or construction work (or such other percentage not exceeding 0.5% of that value as may be prescribed in regulations) appropriate to meet the workforce needs of the sector?
- Are the exemptions to paying the levy as described in Section 23 of the CITF Act and in the Regulations appropriate?
- Is the current levy collection method effective?
- Are there alternative collection methods that would improve levy collection?

Allocation of funds obtained through the levy

- Does Section 32(3) of the CITF Act, which requires money for the provision of training to be allocated to a given sector in “approximately the same proportion” as the amount contributed by that sector:
 - create barriers to holistic workforce and skills development across the building and construction industry?
 - result in challenges addressing any particular areas of need such as upskilling, higher-level training, or cross-sector skilling?

Training plans

- What impact does the requirement under Section 32(1) for the CITB to produce a training plan on an annual basis have on:
 - longer term workforce planning
 - addressing longer term skills and workforce requirements
 - investment in multi-year projects or programs?

Consideration of other models to support industry outcomes

- Are there any other models for supporting industry training and workforce development outcomes that the reviewer recommends to assist the Construction Industry Training Board achieve its objectives?

Methodology and engagement

Following a competitive tender process undertaken by the Department, PEG Consulting was appointed on 27 October 2022 to undertake the Review, and was provided with the Terms of Reference. The Department provided secretariat support to the Review.

In accordance with the Act, the report of the Review will be provided to the Minister within six months of the appointment of the reviewer. The Minister is to table the report in both Houses of Parliament within 12 sitting days of receipt.

Notice of the reviewer's appointment and the review process was provided in early November 2022 to more than 100 parties identified by the Department in consultation with the CITB. The reviewers met with most Board members individually and collectively. They also met other key stakeholders during November and December 2022. A list of these, and others providing input, appears at Appendix 1.

An Issues Paper was released via YourSAy on 16 December 2022. Interested parties could make general submissions, answer survey questions and add comments, or respond to a shorter survey.

A list of submissions and survey responses appears at Appendix 2. All submissions were made publicly available on the Review website.

The reviewers were pleased with the quality and quantity of submissions, receiving more than four times¹ the number of submissions than earlier reviews. A total of 45 submissions or survey responses were received, in addition to the individual consultations. The reviewers thank those who offered their time and views, which have been formative in preparing this report.

Acknowledgements

The Review was conducted independently. However, the reviewers appreciate the willing cooperation of former and current staff and CITB members. CEO Holly Willcox and Presiding Member John Chapman met with the reviewers on several occasions and provided helpful information and context.

The excellent Secretariat support provided by Kuang Tan, Ben Rice and Jodie Golledge, under the leadership of Bec Curtain, in the Department for Education was instrumental in delivering a comprehensive report in a tight time frame.

1 Ten written submissions were made to the 2004 Section 38 Review of the Construction Industry Training Fund Act 1993, conducted by KPA Consulting. Nine written submissions (including two supplementary submissions) were provided to the 2005 South Australian Parliamentary (Economic and Finance Committee) Report into the Construction Industry Training Fund.

Definitions

Act / CITF Act

The *Construction Industry Training Fund Act 1993 (SA)*.

CITB or Board

The Construction Industry Training Board as established under the CITF Act. Composition and functions of the Board are contained in the CITF Act. The organisation has no separate name.

Exemptions

The CITF Act and Regulations prescribe a number of classes of building and construction activity, and items and components used in building and construction, exempt from the levy payment.

Fund

The fund established by the CITF Act represents the monies collected by the levy and administered by the Board to improve the quality of training in the building and construction industry.

KPA Review

The independent review of the CITF Act commissioned by the then government in accordance with section 38 of the 1993 Act, which required that an independent review occur as soon as practicable after 1 January 2003. The review was conducted by KPA Consulting and its final report was tabled in Parliament in November 2004.

Levy

The CITF Act imposes a 0.25% levy on most building and construction work valued over \$40,000. The levy is paid into the Fund established under the CITF Act.

Minister

The Minister to whom the administration of the Act is committed, presently the South Australian Minister for Education, Training and Skills.

Regulations

The *Construction Industry Training Fund Regulations 2021 (SA)*, made under the CITF Act.

Review

The independent review (Review) required by section 38 of the CITF Act of amendments to the CITF Act by the *Construction Industry Training Fund (Board) Amendment Act 2019 (SA)*; and related matters contained in the Terms of Reference for the Review.

Sector

The CITF Act prescribes three sectors: housing, commercial and civil sectors. Other sectors may be prescribed under the Regulations. The scope of each of the industry sectors is defined under the CITF Regulations.

Training Plan

The CITF Act requires the Board to develop a training plan that sets out the Board's priorities regarding the use of the Fund for the next financial year. The Board must present its training plan for the Minister's approval by 31 May each year.

Legislative history and prior reviews

A comprehensive legislative history of the Act can be found at Appendix 3.

South Australia was the third Australian jurisdiction to legislate for a building and construction training levy. The model is most similar to that used in Tasmania and Western Australia.

Queensland's training levy is unique insofar as it is collected through a combined process with that State's portable long service leave levy for the building and construction industry and a work health and safety levy.²

The SA Act was first amended in 2000 with the passage of the *Construction Industry Training Fund (Miscellaneous) Amendment Act 2000 (SA)*. This implemented a recommendation from a 1997 Coopers and Lybrand consultancy review to raise the project value threshold at which the levy was payable from \$5,000 to \$15,000. Other significant amendments at that time included:

- removing the exemption from paying the levy that was granted to state and local government authorities
- implementing the government's intention that plant and equipment should be leviable where that plant and equipment constitutes an integral part of the building and construction work (however the installation of non-integral plant and equipment would remain leviable)
- refining assessment and collection processes to ensure equitable application of the training levy across enterprises subject to the levy
- requiring a further review of the Act to be undertaken as soon as practicable after 1 January 2003.

Two reviews were undertaken over 2004 and 2005. The first was an independent review by KPA Consulting ("the KPA Review") to satisfy the requirement under section 38 of the Act that a review commence as soon as practicable after 1 January 2003.

Appendix 3 covers in detail the outcome of the KPA Review, within which the key recommendations were:

- to remove the sector hypothecation model that required the distribution of funds to the industry sector in approximate proportion to their contribution (not implemented)
- the removal of the "veto" provision that required a majority of, respectively, the employer and employee nominated members of the Board to agree to a resolution of the Board (implemented in 2019).

The South Australian Parliament's Economic and Finance Committee undertook a review at around the same time and tabled a report in November 2005. This parliamentary review made recommendations directed at the Board's strategic operations and its reporting role to government. It also recommended that the Act's objects be amended to indicate that the Board's primary role was to provide training in labour and industry skills shortages. This reflected a major issue at that time: whether the CITB's funding should be directed at upskilling or training of existing industry members, and/or whether the Board's efforts should address skills shortages. However, no changes were made to either insert objects or add to the Board's functions.

The next round of reform occurred in 2017³ as a result of the then government's broad review of statutory boards and committees. One change lifted the levy threshold from \$15,000 to \$40,000.

2 The Queensland training levy was introduced via amendment to the *Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)* in 2005.

3 Implemented by the *Construction Industry Training Fund (Exemptions) Variation Regulations 2017*.

Further reforms to the Act occurred in 2019. The *Construction Industry Training Fund (Board) Amendment Act 2019 (SA)* commenced operation on 20 June 2019. The reforms changed the composition of the Board and, by extension, the Board appointment process. Since 1993, appointments to the Board had been largely through the Minister accepting nominations by prescribed employer and employee associations. The 2019 amendments aligned the power to appoint members more closely with the Minister, and reduced employer and employee representation on the Board. Parliament included a requirement that the Act be reviewed three years after these amendments, which is the trigger for this Review.

The most recent change to legislation underpinning the CITB and Fund, in 2021, was to the requirement that a project owner notify the Board of a variation in the final project cost. This was achieved by replacing the CITF Regulations with new regulations that raised the value requiring notification from \$25,000 to \$50,000.⁴

The building and construction industry in South Australia

Sectors of the building and construction industry

For the purposes of the Act, the CITF Regulations provide that the sectors of the construction industry are constituted as follows⁵.

The housing sector

That part of the building and construction industry which carries out building or construction work on a building that is intended to be used predominantly for long-term residential purposes. This includes a residential dwelling unit, or a number of residential dwelling units, each of which contains cooking and bathing facilities. A building that is a dwelling unit which is part of an educational institution, a hospital or other building offering institutional care or temporary accommodation (such as a motel, hostel or holiday apartment) is not included in the housing sector;

The commercial sector

That part of the building and construction industry, other than the housing sector, which carries out building or construction work on, or resulting in, a rigid, fixed and permanent structure with a roof, the intended purpose of which is for the shelter, or the use, of people, plants, machinery, goods or livestock;

The civil sector

The remainder of the building and construction industry.

Industry characteristics

The building and construction industry is an important contributor to the social and economic fabric of South Australia.

The building and construction industry accounts for 8.7% of employment in South Australia and is the third-largest employing industry⁶. Ten years ago, it was the fourth-largest employing industry. It contributes up to \$9 billion⁷ annually to the South Australian economy.

4 Implemented by the *Construction Industry Training Fund Regulations 2021 (SA)*.

5 CITF Regulations, regulation 4.

6 Source: Australian Bureau of Statistics (September 2022), Labour Force, Australia, Detailed, ABS Website, accessed 18 November 2022.

7 Revenue depends on the level of building and construction activity. In the 2021-22 financial year, ABS advises the Construction industry contributed \$9.2 billion to the South Australian economy. Source: Australian Bureau of Statistics (2021-22-financial-year), Australian National Accounts: State Accounts, ABS Website, accessed 18 November 2022. In 2020-21 the contribution was \$8 billion.

Workforce profile⁸

- Employment in the building and construction industry in South Australia increased by 11,700 people between 2012 and 2022 – this represents an increase of 15.1%.
- There are 77,400 people employed in the building and construction industry in South Australia. Of those:
 - 87% are employed on a full-time basis (State average across all industries is 66%)
 - 86% are male (State average across all industries is 52%). In building and construction trades, female participation is (depending on the trade) far lower than male participation, at around 1% to 5%
 - 77% are employed in Greater Adelaide (all industry State average is 80%)
 - 61% are under 45 years old (all industry State average is 58%)
- About 63% possess a Certificate III or higher (compared to a total workforce average of 66%)
- About 46% have a Certificate IV (compared to a total workforce average of 24%).
- Approximately one in eight people employed in South Australia with a VET level qualification are employed in the building and construction industry.

Business profile⁹

- There are more than 24,200 building and construction businesses in South Australia.
- Non-employing businesses account for 65.3% of building and construction businesses, higher than the State average across all industries of 63.7%.
- Businesses with one to 19 employees account for 33.4% of building and construction businesses, higher than the State average across all industries of 33.9%.
- Businesses with 20 to 199 employees account for 1.3% of building and construction businesses, lower than the State average across all industries of 2.3%.
- Businesses employing 200 or more employees account for less than 0.1% of building and construction businesses, lower than the State average across all industries of 0.1%.

Occupational skills shortages¹⁰

- Of the 79 occupations where the building and construction industry employed 25% or higher of the occupation, 50 are classified by the National Skills Commission (or 63.3%) as being in shortage.
- The National Skills Commission classifies all 17 occupations that make up 'Construction Trades Workers' (as per the ABS definition) as being in shortage.

Labour shortages are forecast to continue, with recent reports estimating that South Australia will require an additional 10,000 construction workers in the next five years.¹¹

8 Data obtained from Australian Bureau of Statistics (September 2022), Labour Force, Australia, Detailed, ABS Website, and 2021 Census of Population and Housing (accessed 18 November 2022).

9 Source: Australian Bureau of Statistics (Jul2017-Jun2021), Counts of Australian Businesses, including Entries and Exits, ABS Website, accessed 18 November 2022.

10 Derived from Skills Priority List - National Skills Commission, National Skills Commission Website, accessed 18 November 2022.

11 *Building industry crying out for workers*, Belinda Willis, InDaily, 6 October 2022.

Industry challenges

The industry faces a number of challenges including:

- ongoing low completion rates by apprentices
- very low female participation in building and construction trades
- a high incidence of reported poor mental health among the building and construction workforce
- increasing automation and digitisation of processes and technologies
- cyclical changes in the level of building and construction activity, which affects the certainty of ongoing employment
- the poaching of employees when labour shortages occur and the prevalence of workers changing their employers or occupations
- poor business management practices and low margins, with a number of high-profile businesses entering insolvency in recent years affecting consumers and subcontractors
- widespread use of subcontracting arrangements across government and private sectors
- relatively weak productivity growth over recent decades.¹²

¹² *The Opportunity Cost of Poor Productivity Performance in the Australian Construction Industry*, Oxford Economics: <https://www.constructors.com.au/wp-content/uploads/2022/06/The-opportunity-cost-of-poor-productivity.pdf>

PART 2:

Objects, Board composition and functions

Objects

Recommendation 1 – The Act should include an Objects section so that the Board’s purpose and the priority for the Fund’s administration is clear. The section should include that the Fund is appropriately administered; that it is applied to deliver quality training that addresses skills shortages, entry level training and upskilling; and that Board decision-making is based on data and evidence.

Under section 38 of the Act, the Review was required to consider whether amendments have helped attainment of the Act’s objects. The Act does not have an Objects section - although these may be inferred from the functions ascribed to the Board.

The administration of the Act could be improved if objects clearly outlined the purpose of the legislation. This would minimise uncertainty and ambiguity in how the Act is applied and interpreted.

There is widespread and strong support for the Act’s Objects to provide clear direction to the Board on the priorities for and decisions related to expenditure based on evidence and data.

In terms of specific objects views varied on what the priorities should be.

It is important, in our view, that appropriate Objects contain goals relevant to the interests of workers in the construction industry, and training outcomes for them, and not just objects regarding the provision of skilled labour to employers. – CFMEU & CEPU (South Australia)

[The Objects should] include an obligation relating to research and the use of information collected by the board to be analysed and promulgated in a way that is valuable to the industry. – Gay Thompson

HIA supports the inclusion of clear Objects in the Act to better outline the purpose of the CITF and the functions of the CITB. While HIA supports the inclusion of matters such as ‘addressing skill shortages, upskilling and entry level training as supported by data and evidence’, other matters such as the following should be included:

- *offering quality training*
- *Improving the uptake of training and developing in the industry.*
- *Collection of the levy and administration of the Fund.*
- *Development of a Training Plan.*

Further consultation is required to determine what these objects are. – Housing Industry Association (South Australia)

[TAFE SA] supports the inclusion in the CITB Act of objectives that support social inclusion and participation in public life. This could include objectives to ensure the Board composition includes people from diverse linguistic and cultural backgrounds, as well as gender diversity. – TAFE SA

The legislation should be amended to ensure the purpose and priority of the Board are clearly defined. The object of the Board should be to address skills shortages, encourage people to enter the industry, upskill existing participants and meet the needs of the industry. – Master Builders Association of South Australia

Yes, supported. ...Intelligence on skills shortages is vital to ensure that monies are being directed to the most appropriate use, upskilling in the form of courses for new technologies and CPD programs are strongly supported by MEA. – Master Electricians Industry Association (South Australia)

The Property Council supports Objects within the Act to focus the interpretation of the Act to ensure a competitive and highly skilled workforce in the South Australian construction industry. The performance of the CITB and the Fund should be measured against those Objects so that any future reviews are structured against continuous improvement. – Property Council of Australia (South Australia Division)

If the recommendation to include objects in the Act is accepted, further consultation should occur on specific wording and scope.



Board members

Recommendation 2 – The Act be amended so that Board appointments collectively satisfy a skills matrix to ensure Board duties can be appropriately discharged. To ensure the Board also has the appropriate industry knowledge and representation, these appointments should be drawn from a balance of employee, employer and Ministerial nominations. There should be no increase in the total number of members.

Recommendation 3 – Stakeholder views and observations, as captured in this report, should guide the design of the Board’s skill matrix and knowledge requirements.

Recommendation 4 – When selecting Ministerial nominees the Minister should consider the objective of supporting intelligence and information sharing between government and the CITB, given that government is the major customer of the industry.

Recommendation 5 – Provisions in the Act regarding disclosure of interest and duties of honesty, care and diligence be reviewed when the Act is amended to ensure they remain current and appropriate to adequately deal with the situations that may arise for the CITB. The Minister should consider potential conflicts of interest when nominating appointees to the Governor.

Recommendation 6 – The Board provide and implement clear member induction and charter information so responsibilities are recognised and understood.

Recommendation 7 – Board members have access to contemporary data, research and intelligence for informed decision-making, including integrated whole of sector data modelling.

Current Board arrangements

The Act requires a Board composed of:

- one person to be the presiding member of the Board;
- at least four (but not more than eight) persons who have knowledge of, and experience or expertise in, the building and construction industry of whom –
 - at least one person is nominated to represent the interests of employers in the building and construction industry; and
 - at least one person is nominated to represent the interests of employees in the building and construction industry; and
 - two persons who are, in the opinion of the Minister, independent of the building and construction industry.

In relation to these appointments, the Minister must:¹³

- seek to ensure that the Board comprises persons who together have the knowledge, skills and experience necessary to enable the Board to carry out its functions effectively; and
- seek nominations through an expression of interest process (except in relation to the two members independent of the building and construction industry).

The Act now requires neither a cross-section of relevant skills, nor a balanced representative base (except to a minor extent the minimum two members who, in the Minister’s opinion, represent employers and employees). Board membership is at the discretion of the Minister and linked to industry knowledge, expertise and experience that the Minister considers suitable.

The Act does not specify how the minimum two representative members should represent the interests of employers or employees, leaving interpretation to the Minister.

¹³ The Minister must also consult with the Presiding member in relation to the appointment of members under section 5(1) (b) and (c), that is, the 4-8 members who have knowledge of, and experience or expertise in, the building and construction industry; and the 2 members independent of the building and construction industry.

Skills and knowledge

It is reasonable that a fund of this size with public policy objectives is governed by an appropriately skilled and knowledgeable board. The CITB was responsible for levy collection that amounted to just under \$27m in 2021-22. The CITB also holds around \$28.4 million in reserve.¹⁴ The Board is responsible for the allocation of these funds to achieve public policy objectives of supporting investment into building and construction industry skills and training.

It is common for legislation establishing boards to explicitly require specific skills to be present. This acknowledges that modern statutory boards operate in highly complex legal, commercial and regulatory environments and that multi-disciplinary board structures, with members possessing the requisite range of skills, are in the best position to discharge these functions. This is achieved under other legislation by:

- including an explicit requirement that board members have specified skills outside the board's core purposes, such as legal, risk management or financial skills; and/or
- specifying that board members together have the abilities, knowledge and experience necessary to enable a Board to carry out its functions effectively.¹⁵

During consultation, the reviewers found strong support for the collective Board membership to have the requisite skills and experience, and a skills matrix approach was suggested by multiple respondents. There was general agreement on the type of skills and experience suggested. Suggested fields of expertise included strategic planning, legal, finance, risk, IT, building and construction industry experience and knowledge (including in work, health and safety matters), an understanding of the training environment and VET system, and the ability to forecast future workforce needs.

As a result, the reviewers recommend that the composition of the CITB should be consistent with good governance principles and that the collective membership should satisfy a skills matrix,¹⁶ with no increase in the size of the Board. A skills matrix would transparently define the skills, knowledge, experience and capabilities the Board requires to manage the Fund in a way that appropriately discharges the Board's responsibilities.

Board Members should have extensive knowledge of training specific to a relevant industry sector. The Act should require the appointment of Board members who are experienced to fulfil Board positions including training, legal, financial, risk as determined by an industry informed skills matrix. Board members should include people from the industry to add value as well as training and other relevant expertise to bring different perspectives. A skills matrix should be completed to support Board recruitment, value and risk management. – Civil Contractors Federation (South Australia)

Board membership should be based on knowledge and skills that brings expertise to the Board's operation and not purely on representational rights which is counterproductive to good governance principles. – National Electrical Communications Association, Refrigeration and Airconditioning Contractors Association, Specialist Contractors SA

¹⁴ CITB Annual Report 2021-22, p.33. Amount held in reserve is \$28,410,000.

¹⁵ For example, the *SACE Board of South Australia Act 1983 (SA)*, section 8(2).

¹⁶ Where nominations for these appointments are sourced to meet skill requirements, and the broad question of knowledge representation, is discussed later in the Review report.

TAFE SA supports changes to the Act to ensure that the Board composition includes members with knowledge including:

- *Application of fiduciary responsibilities*
- *Capabilities in strategic planning*
- *Government policy priorities and planning*
- *Legal skill sets*
- *Financial and risk expertise – TAFE SA*

On the skills required for the Board, and in addition to construction industry experience, we believe legal, financial and training expertise are critically important, however the UDIA also believes that a critical function of the CITB is to both forecast and plan for broader development trends that will impact skill requirements. This contrasts with responding to shortages after they occur. – Urban Development Institute of Australia (South Australia)

The Act should require the Minister to appoint board members that bring a high level of appropriate knowledge and skills to the Board and that all relevant areas such as accounting, legal, IT and construction skills are covered. – Master Builders Association of South Australia

The Board believes that the Act should require the appointment of Board members that have the right skills to do the job as well as ensuring balance of diversity. There should be a skills matrix for the Board. Board members should include people from the industry to add value as well as training and other relevant expertise to bring different perspectives. – CITB



Training and vocational education expertise

Stakeholders were asked whether the Act should require the appointment of a Board member with extensive knowledge of training policy and the contemporary training landscape.

Before the 2019 amendments to the Act, it was a requirement that the Board include two persons nominated by the Minister with appropriate experience in vocational education or training, including currently or previously being employed or engaged in the provision of education and training (hereafter, the “VET experience requirement”). During the Board’s operation from 2010, members appointed to this role included:

- a government department executive in the education and training portfolio
- an employee of the (former) South Australian Training and Skills Commission
- a director of a training provider
- a former TAFE SA executive
- an independent executive consultant
- a chief executive of a state government utility.

The 2019 amendments removed this VET experience requirement. Instead, there is a requirement to appoint two members “independent of the building and construction industry”.¹⁷ While such members may be selected for their knowledge or expertise in VET and the delivery of training, this has not occurred.¹⁸ The reviewers heard that this has limited the Board’s capacity to engage with the highly specialised areas of VET and career planning and for building VET pathways to the building and construction industry. Feedback to the Review was firmly in favour of Board membership including someone with extensive knowledge of training policy and the contemporary training landscape.

The CITB should be composed of members of the building and construction industry. This is important to ensure that members can add value in a tangible way. Equally important is that members have knowledge and experience across the construction industry training landscape. HIA recommends the inclusion of members – plural – with extensive knowledge of the industry and the contemporary training landscape.

– **Housing Industry Association (South Australia)**

The Board lacks a representative from the vocational educational system, who could provide valuable input to the Board’s considerations and decisions. – **Small Business Commissioner**

It is essential that Board members have significant knowledge and understanding of the building and construction industry as well as the education and training systems. – **Master Builders Association of South Australia**

Since training is the core business consideration of the Board, having such representation seems appropriate. – **Adelaide Training and Employment Centre**

17 CITF Act, section 5(1)(c).

18 Since the 2019 Amendments, the independent members have been drawn from outside Vocational Education and Training (VET). However, other members do work for organisations that provide training to the industry but the Review has been told the breadth of knowledge of the system is not akin to that provided by members appointed prior to the amendments to the Act.

Employer and employee representation

The reviewers found that the 2019 Amendment was seen to have resulted in an unbalanced representation of employer and employee knowledge and experience. Achieving a greater balance of knowledge representation from employees and employer associations was supported across the sector. The reviewers suggest nominations from specified employer and employee representative organisations should each comprise a third of appointments of ordinary members.

Comparison with sector representation boards

The Review examined the structure of several boards that administer funds on behalf of particular stakeholder groups, such as employers, employees, or other fund contributors or beneficiaries. The reviewers note that while not universal, it is common that the relevant board incorporates people nominated by, or drawn directly from, representatives of industry, consumers or other beneficiaries of the entrusted funds. For example, the Board established by the *Construction Industry Long Service Leave Act 1987* (SA) comprises seven members, appointed by the Governor-in-Council, including:

- three members nominated by the Minister after taking into account the recommendations of employer associations, to represent the interests of employers in the construction industry, and
- three members nominated by the Minister after taking into account the recommendations of the [peak industry union], to represent the interests of construction workers.

Similarly, the Board established by the *Superannuation Act 1988* (SA) comprises people representing contributors, members and spouse members of the relevant superannuation funds, and consumers of superannuation investment services and products.

Boards whose membership comprise the funds' beneficiaries are said to be able to optimise the quality of decision-making, by taking into account the interests of fund recipients. However, in the case of the CITB, the Board's functions extend beyond the safekeeping of funds invested on behalf of employers and employees in the building and construction industry. The CITB's mandate requires, in addition to this, Board capabilities that span governance, industry and employee concerns and interests.

Jurisdictional comparisons

A comparison with counterparts to the CITB in other jurisdictions demonstrates that each has a more substantial mechanism for ensuring the representation of the interests of employers and employees.

- In Western Australia, the Board consists of nine members appointed by the Minister following consultation with 14 named employer and employee associations.
- In Queensland, the Board of the Building and Construction Industry Portable Long Service Leave Authority (which collects the training levy) includes three directors representing employers in the building and construction industry and three directors representing workers "who perform building and construction work".¹⁹
- In Tasmania, the governing board includes three people who have knowledge and understanding of the interests of employees within the building and construction industry and five persons who between them have knowledge and experience of the key segments of the building and construction industry (residential, non-residential, civil, building services and building professions).
- In the ACT, the governing board includes two members to represent the interests of employers and two members to represent the interests of employees in the building and construction industry.

As a result of the 2019 Amendment Bill, the South Australian Act has the least substantial employer and employee representative mechanism among the five state and territory schemes for ensuring the views of employers and employees are represented on the Board. This has consequences for ensuring the Board is adequately informed of the views that employer and employee-nominated representatives are best placed to provide, such as perspectives related to occupational health and safety and technology and process changes affecting the building and construction industry. The reviewers recommend that a balance be struck between ensuring employers' and employees' views are adequately transmitted to the Board and having a Board that as a whole has the requisite skills to administer the fund.

¹⁹ In addition, the Board must include a deputy chairperson who must have knowledge of, and experience in, financial affairs.

Stakeholder views

The reviewers heard support from both employee and employer organisations for a more balanced representation of board members to ensure that the knowledge of the industry from employee and employer perspectives was maintained.

While some believed that appointment to the Board should not be based purely on representational rights, many argued that the previous representational model was more successful and that the 2019 changes removed genuine industry representation on the Board.

It was also commonly noted that an absence of balanced viewpoints of employers and employees is not within the intended spirit and impetus of the original Act.

The Small Business Commissioner observed that the Act does not require any representation of the interests of small and family enterprises who do not employ staff (which is reflected in the investments decisions of the Board). This is significant given more than 95% of businesses in the building and construction sector have fewer than 20 employees and 65% of businesses are non-employing. The reviewers suggest that ensuring the Board has access to the perspectives of the operators of these small businesses, who at various times may need and employ skilled workers, is also important.

The Board believes that the composition of board members should have a greater balance of employer and employee representation; however, it should include a reference to knowledge / industry experience of the representative. – **CITB**

MEA believe that feedback and industry intelligence from representative employee and employer organisations that are broadly representative of different facets of the sector is the most transparent and effective way for boards such as the CITF to operate and reflects best practice in other comparable jurisdictions. – **Master Electricians Industry Association (South Australia)**

The composition of board members should have a greater balance of employer, employee and levy payer (building / construction client) representation; however, [it] should include a reference to knowledge / industry experience of the representative. – **Civil Contractors Federation (South Australia)**

The current board has just one employee representative from a trade union, with six board members representing peak industry organisations or employers... Irrespective of the merits of any individual on the board, this outcome clearly represents an imbalance between stakeholder voices on the board. For the board to be delivering better outcomes for South Australia's construction sector, and to the advantage of the South Australian economy, a more balanced board is recommended... – **McKell Institute**

We do not contest that there is a value to having employer perspectives involved in industry training. It is important, for instance, that training needs be considered having regard to what business is forecasting it will require in future. It is also important to the longevity of the scheme that business considers itself a stakeholder. It is undoubtedly also true that there are issues upon which heads of employer associations and senior management of companies can offer little insight, and which would benefit from the insight and assistance of workers, expressed through their unions. For instance, in so far as the Board is concerned with impediments to persons completing qualifications, significant insight may be able to be gained from the views of workers who have either not completed, or who have previously completed training.
– **CFMEU & CEPU (South Australia)**²⁰

I consider the board, as previously constructed and operating, was an enhancement to the construction industry. The fact that it resulted from extensive lobbying by employee and employer organisations set it up for success. – **Gay Thompson**

20 The CFMEU & CEPU submission makes an important point about gaining insights from those that the CITB (and industry itself) are seeking to attract to the industry. Irrespective of Board appointments, it is clearly important for the CITB as an organisation to engage with this cohort in a deliberate and considered way.

It is my understanding that only two board members can be considered to have a representative role. Nevertheless, in my observations in the limited time that I have been on the board it is not uncommon for other board members to participate from a perspective that could be perceived as being representative in nature, including by presenting the views of their organisations or employers. In that way, the board functions similarly to the representative boards that I participate in, but without the same balance... As it currently stands, the employee representative position on the board cannot in any meaningful way counterbalance employer association perspectives. – Peter Russell (current CITB Board Member)

Feedback to the Review underscored that the current method of appointing members to the Board is too dependent on the views of the Minister and government of the day. This is due to the 2019 amendments removing the requirement that the Minister consult with external stakeholders when selecting Board members. As submitted by one respondent:

It is clear that the 2019 reform to the Act concentrated increased appointment powers to the Minister, which risks the CITB board being filled, at some point in the future, with potentially unmeritorious appointees that have curried favour with government, or are perceived to be pliable to government interests. – McKell Institute

The reviewers recommend that the McKell Institute's proposal for a 'one-third model' – where membership comes equally from nominations of employers, employee and the Minister's representatives – with an independent Chair chosen by the Minister, and the overall composition meet the requirements of a specific skills matrix, would be appropriate in the South Australian context.

Ideally, balance should be enshrined in the board. This can be achieved by reforming the appointment process to ensure that there is balance... without the risk of 'allied' members representing similar constituencies dominated board decision making. A potential model is the 3 + 3 + 3 + 1 model – a structure that would enshrine balance in the board, while maintaining the position of independent, impartial expert voices and an independent Presiding Member. – McKell Institute

While the Review has intentionally focused on the skills of members and the overall Board, rather than the Board's size, the reviewers suggest that any reforms to membership should not increase the number of Board members, and that a smaller Board might be more productive.

Minister nominations

The Minister's current nominations include two members independent of the building and construction industry. The reviewers consider that the Minister's nominees could include those who may provide relevant knowledge in relation to training and skills; or the government's requirements as a client of the industry; or be independent for the reasons discussed below.

Government as a levy payer

Government infrastructure projects together are the dominant greatest contributor to the fund - larger than the contribution of any one individual sector. State Government Budget Papers and levy receipts seen by the Review show that the Commissioner for Highways is the most substantial individual contributor to the Fund, contributing approximately \$0.8 million in the 2021-22 financial year – 27.8% more than the next-largest contributor. The South Australian Government also had nine other agencies making direct levy payments, bringing the contributions to \$935,962 in 2021-22. The reviewers understand that most government agencies pay the project levy through contracted companies; this is supported by data indicating that direct payments represent only \$374 million in leviable projects. Yet the 2020-21 Budget Papers identified that about \$1.1 billion was spent on schools, hospitals and road projects alone in the preceding year.

The 2022-23 State Budget committed \$18.6 billion over four years in total public sector infrastructure spend. This included \$7.83 billion on roads, \$2.95 billion on health facilities, \$653 million on education facilities, \$117.5 million on new housing builds, and \$250 million on sporting infrastructure. Assuming this is all leviable activity, government expenditure could be expected to account for more than 40%, and potentially up to 50%, of levy revenue received by the CITB over the next four years.

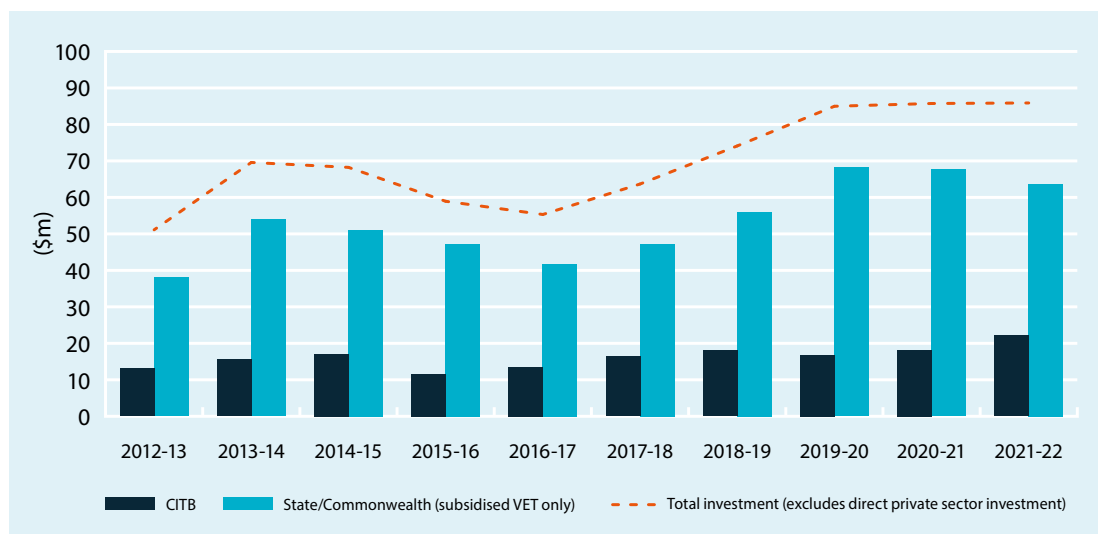
These projects will demand significant workforce capability. Government decisions on planning, shifts in funding priorities, and delays and changes to project timetables, have real ramifications for the construction sector and workforce demands.

Government as an investor in training

In addition to being the major payer of the levy, government also invests more into construction industry skills and training than the CITB.

The CITF levy can constitute less than a third of investment in construction industry training, with the remainder invested by state and federal funding (Chart 1). Again, with no government representative on the Board, deliberations occur with limited knowledge of government training policy priorities and how these may interact with CITB investment decisions. For example, the recent 'Fee-Free VET' for a number of trades has a direct impact on CITB planning considerations, but the Board does not have a representative who can explain how these policy priorities might be implemented or affect CITB priorities. The reviewers suggest there would be benefit to the CITB, government, industry businesses and taxpayers if there was a person with knowledge of the training and skills policy landscape on the Board.

Chart 1: Public investment in skills and workforce development (building and construction, 2013-22)



Source: CITB and Department for Education

Policy interface

On 1 July 2021, the *South Australian Skills Act 2008 (SA)* came into operation to provide “a framework for skills and workforce development, to better support regulation of apprenticeships and traineeships, and growth of future industries and workforce demands”.

It established the Construction, Mining and Energy Skills Council (CMESC). While membership of both CITB and CMESC may overlap, this is not by design. As a result, alignment of the government’s objectives and mandate of the SA Skills Commission and the CITB activities is ad hoc. The reviewers suggest that the Minister formalise this relationship through nominations to the Board, should they wish.

Nominations

The reviewers considered the option of an appointment from government to the Board to strengthen the strategic ties across the Board and government, including in relation to investment in training for the building and construction industry.

They heard from stakeholders that the inclusion of an appointment from government would bring to the Board insight into government decisions that affect CITB deliberations, such as major project funding decisions and the training and skills policies discussed above. The reviewers note that there has been, and remains, some industry resistance to the Board being closer to government and losing its character as an industry body, independent of government.

The reviewers have not recommended particular government representation on the Board, but are persuaded that a government perspective could be valuable. The reviewers are satisfied that if other changes occur so that collective nominations must meet identified skills requirements, there will be an opportunity for the Minister to consider the merits of government representatives.

Board members’ fiduciary duty

The Issues Paper sought feedback on the proposition that the Act should confirm that Board members’ overriding fiduciary duty was to the Board. Previous reviews of the Act had raised this issue and it also emerged in early consultation for this Review.

Feedback reinforced that for a Board entrusted with public funds administered by members with business interests, and considering the representative history of the Board, there should be maximum clarity around Board members’ fiduciary duty to the Board in their decision-making.

The reviewers acknowledge that this issue is neither unique nor limited to the CITB. Boards that deal with funding and have members drawn from business and organisations because of their expertise and experience may face challenges in terms of members’ conflicts of duty and interests, as the South Australian Independent Commission Against Corruption (ICAC) explains²¹:

Many people who are appointed to public sector boards are appointed precisely because they have relevant affiliations, connections, personal expertise or business interests within an area of government focus or activity. Upon appointment, many, if not most, of these community members become public officers. Then they are required to ensure their private interests, businesses and employment arrangements do not improperly influence their public duties as a board member.

With so many boards requiring members with expertise and skills relevant to the boards’ work and functions, it is almost inevitable that conflicts of interest will arise for board members. It is quite predictable that members of the community will perceive there to be conflicts of interest among members of boards, even where they have been properly identified, disclosed and managed. ...

21 Independent Commission Against Corruption South Australia, “Keep it above board”: Membership of public sector boards and committees, Integrity Matters Newsletter, 2022. Accessed at: <https://www.icac.sa.gov.au/media-and-news/newsletter/integrity-matters-2022/keep-it-above-board>.

The existence of such large numbers of public sector boards and committees gives rise to risks of improper interaction between public administration and the myriad interests of the private sector. Managing the many conflicts of interest that must emerge at such an interface is a delicate balancing act. Public sector boards and committees require strong and sound supervision to ensure that any conflicts of interest are identified, declared and managed.

Stakeholders raised this as a matter of interest because employer and employee associations may have subsidiary trading entities that are eligible to receive significant funding from the CITB. Funding decisions may lead to suggestions of a conflict of interest or duty if an employee or office bearer of an organisation who ultimately stands to benefit from the decision is a member of the Board. Board members do not participate directly in decisions to award funding to a specific entity. However, threshold decisions - such as how much funding is applied to apprenticeships compared with short courses - may have the potential to impact organisations that some Board members are connected to. The CITF Act attempts to manage the inherent tensions identified by the ICAC through the following provisions:²²

- Section 8, which details Board members' obligations with regard to disclosing a direct and indirect private interest in the subject of Board deliberations. This provision contains a qualification, common to other legislation for the establishment of boards, that a Board member is not taken to have a direct or indirect interest in a matter by reason only of the fact that the interest in question is shared in common with those engaged in or associated with the construction industry.
- Section 9, which directs Board members to act honestly and with due diligence; and to not make improper use of information or the Board member's position to advantage themselves or others.

The Board has instituted a Board Charter to advise members on their fiduciary and related duties.

The 2004 KPA Review dealt at some length with the provisions under the Act regulating members' conflict of duty and interests. However, no changes were made to the Act to either modify or remove sections regulating Board members' representational and fiduciary interests.

This Review heard the Act must be explicit in outlining the fiduciary duties of Board members and that sector representatives are to avoid a conflict of duty. This was then tested in the consultation, where there was strong support for Board members' fiduciary duty to the Board being made explicit the Act.

Respondents were almost unanimous in their support for the proposition that the Act should confirm Board members' fiduciary duty to the Board and its objects under the Act.

It is difficult to appoint Board members that have all of the required skill sets and industry knowledge who do not have a degree of conflict. This is typical of an industry board and an issue that needs to be grappled with by Board members. Board members often have a duty to their employer (a conflict may arise from employment with employee and employer associations) or interests in their businesses that will influence their views. This is why it is important that the Act confirms the principle that Board members' overriding fiduciary duty is to the Board and its objects under the Act and that Board members can be removed if this duty is breached. – Master Builders Association of South Australia

22 These provisions mirror and amplify provisions under the *Public Sector (Honesty and Accountability) Act 1995 (SA) (PS(HA))*, which apply to members of the CITB who are corporate agency members for the purposes of the PS(HA) Act.

Board member deliberations and decision-making

The Terms of Reference required the Review to consider matters related to the operation and efficacy of the Board. The reviewers understand that the CITB's capacity to produce research and robust data analysis has deteriorated in recent years but is being re-developed.²³ This is important for allowing the Board to maintain a strategic focus.

For the Board to perform its functions – including, as discussed later in this report, the development of a training plan (the plan the CITB develops each year that sets out its funding priorities for the next year) – integrated data, evidence and research is vital.

A properly supported data and analytics capability is essential to the CITB fulfilling its levy-raising and targeted investment in skills development. The Board also relies on robust and useful CITB data and IT systems. The reviewers understand that the CITB is in the process of improving its data collection capability, including re-platforming its training and levy administration system (TALAS) database.

The capacity for the Board to make data-driven investment decisions was strongly supported in the stakeholder responses, and for many it was identified as the critical element of planning and investment.

Significant improvement is required in this [data and research] area. The industry should be informed with workforce planning data regularly in order to ensure training moves well ahead of need.

– **Civil Contractors Federation (South Australia)**

Market intelligence is critical to the development of suitable training plans. The current and projected economy of the state as well as knowledge of future projects and building demand needs to be analysed and interpreted to ensure training plans meet the needs of the industry. The Government and CITB need to have a thoroughly developed strategy and program for gathering data and information on the construction industry from multiple sources as well as the ability for industry participants to approach CITB with information if they have evidence that a training plan needs to be varied.

– **Master Builders Association of South Australia**

We strongly support a broad consideration of data and wider engagement instead of what appears to be such a strong emphasis on consulting sector committees. – **Urban Development Institute of Australia (South Australia)**

The reviewers believe this is a critical capability for the Board in its decision-making deliberations, and therefore has recommended it be explicitly referenced in the Act's Objects.

23 It is noted in relation to this point, that other evidence gathering means, such as the use of field officers was also reduced but is being re-instituted under a different model.

Board matters for which no changes are recommended

The Review is required to consider the impact of the 2019 legislative changes, which made consequential amendments to the Board's appointment and voting procedures. The reviewers make no recommendations on the following matters as it was persuaded that the status quo is appropriate and has sufficient support.

- There is strong support for the retention of voting decisions based on a Board majority, rather than a return to the previous veto provisions. The KPA Review recommended the removal of the "veto" provision on the basis that it was an unnecessary protection for a mature Board whose decisions should reflect the majority of the Board as a whole, not the majority position of each prescribed sectional interest. The current Review considers that the 2019 Amendment Bill properly progressed this reform, and that the logic for the reform holds true irrespective of the sectoral makeup of the Board; that is, that the Board is more empowered to make decisions which transcend sectoral interests if it can make decisions collectively based on a majority view, informed by evidence and robust deliberation.
- There is strong support to retain the Presiding Member's casting vote. This was seen as good governance practice by multiple respondents.
- There is strong support for the expression of interest process for Board appointees to remain. This is seen as open and transparent. Given the recommendations about Board composition, it is envisaged that this process would be retained for ministerial appointments consistent with the other recommendations of this report.

Deputy members

Recommendation 8 – As the Board is presently comprised, there is no need to appoint deputy Board members. The exception is if there is only one appointee fitting the criteria under s 5(1a)(a) and (b). However, if the Act is amended so that Board members meet skills matrix and sector representation, there may be reason to appoint deputy members to mirror the Board composition.

The Act allows the appointment of deputies to members of the Board, to act in members' absences. A deputy may act for a member in their absence and during that time has the powers of a member; that is, to attend and vote at Board meetings and be counted when determining whether a quorum is present. The Review was informed that, in practice, deputy members are rarely called upon to deputise for members. Given their separation from the Board's routine business, they were seen as unlikely to be able to make strong contributions to deliberations.

Stakeholders had mixed views on the efficacy of the appointment of deputies to members, with some respondents supporting their continuation and others questioning the need to have deputy members at all.

Board members do not support the appointment of Deputy Members. – CITB

The NFIA submits that Deputy Members are not required and full representation on a Board can occur in the event the Member is not available. – National Fire Industry Association

We support a representative board, and believe that deputies can serve a function for representative members, provided that they are from the same organisation as the persons who they are deputising. Deputies for skill set appointments do not serve the same function: people with particular skills do not share the same opinions or views. Deputies serve an effective function on representative boards, and should exist for representative members. – CFMEU & CEPU (South Australia)

It is important for a Board operating on a majority decision basis that full representation can occur in the event the Member is not available. – National Electrical Communications Association, Refrigeration and Airconditioning Contractors Association, Specialist Contractors SA

HIA does not support the appointment of Deputy Members. Only the Members as appointed by the Minister should be on the CITB. – Housing Industry Association (South Australia)

MPA believes that Deputy Members are not required due to concerns around confidentiality and Deputy Members lacking sufficient knowledge of past meetings and discussions. In addition with remote attendance at meetings becoming more mainstream via Zoom / Teams, it is now less likely that Members will need to miss meetings. – Master Plumbers Association of South Australia

Deputy Members should be appointed to ensure a consistent quorum not just a specific skill set. – Australian Workers' Union (South Australian Branch)

Opening the opportunity for deputy members to be appointed for all Board positions improves exposure of the Board process to industry, and allows for training opportunities for the next generation of representatives. – Master Landscapers of South Australia

The reviewers are persuaded that if the composition of the Board is amended as they recommend, and noting that the Act provides this to be discretionary, there are reasons a Minister may choose to suggest the appointment of deputy members. However, in the interim period the Minister may wish to consider on a case-by-case basis whether a deputy appointment is necessary.

If the Board composition is adjusted to draw on a skills-based board from a balance of employer, employee and Ministerial nominations, deputy member nominations should be matched with member nominations that reflect both the sector and the skill base of the member nominee. This facilitates a continuation of the skill and representative basis for the appointment. For example, if an employee organisation nominated a board member with work, health and safety expertise, this nomination should be matched with a deputy nomination with similar expertise from a similar sector representation.

Board Committees

Recommendation 9 – Section 13 of the Act be amended to require the Board to consult with its Committees in the formulation or amendment of its training plan.

Recommendation 10 – Section 13(2) of the Act be amended to require a cross-sector workforce planning committee.

Recommendation 11 – Section 10 of the Act be amended to permit the Minister to approve allowances or expenses of Committee members.

The Act nominates three industry sectors – housing, commercial and civil – that are reflected in the committee structure.²⁴ The committees comprise between 10 and 15 members each, with representation including industry peak bodies, individual business owners and operators, group training organisations, and employer and employee associations.

Each committee is tasked with:²⁵

- representing the interests of its sector in managing the fund
- advising the Board on the allocation of money from the fund to benefit its sector, and
- advising the Board on any other matter relevant to its sector; or carry out other functions determined by the Board.

The reviewers heard that sector committees play a valuable and flexible role in informing the Board of important matters and generally assisting with the Board's deliberations, decisions and priority setting. They also provide an avenue through which industry representatives may contribute. However, the reviewers also heard that engagement has varied over time, according to priorities of the sitting Board, the Presiding Member and individual members, and the CITB CEO. The reviewers suggest that access to this intelligence and the representative nature of the Committees are important to Board decision-making, so the committees' functions should be formalised.

24 The Act also permits other sectors to be recognised. For example, the Board has previously established a Specialist Services Committee covering Plumbing, Electrical and related services (source: CITB Annual report 2017-18) and an Entry Level Training Reference Committee (source: CITB Annual Report 2018-19).

25 CITF Act, section 13(3) lists the functions of sector committees.

Generally the members of the sector committees have a better and more contemporary understanding of industry training needs. – National Electrical Communications Association, Refrigeration and Airconditioning Contractors Association, and Specialist Contractors SA

Sector committee membership is representative of all industry sectors, unlike the make-up of the Board. As such, a requirement to engage with the sector committees in the preparation of the Training Plan should be formalised to ensure that all industry sectors have an opportunity to be heard and/or advocate for representation in the training plan. – Master Landscapers of South Australia

TAFE SA acknowledges the important role of Sector Committees in providing RTOs and industry with opportunity to input to the Training Plan. TAFE SA therefore advocates for the Act to formalise a requirement to consult with Sector Committees during preparation of the CITB Training Plan. – TAFE SA

Whole-of-workforce committee

The reviewers consider there would also be benefit in the CITB having access to advice from a holistic workforce advisory committee. The Act does not preclude this now; nor does it specify it as a requirement. Section 13(1) states the Board has the power to establish such a committee as it thinks fit.

The reviewers were persuaded by stakeholders who favoured an additional committee being prescribed to provide a cross-sector and whole-of-industry perspective on:

- issues and trends that may affect the entire industry, such as worker mobility and regional and remote workforce availability
- emerging industries
- small businesses who employ apprentices and trainees
- matters raised by stakeholders such as local government, architects, quantity surveyors, and planners.

The reviewers were persuaded that such a committee would improve workforce planning. It could include stakeholders not generally considered to be at the centre of building and constructions, including architects, surveyors and town planners, and landscape design, who are critical to project delivery and are represented in other peak bodies.²⁶ This view was reinforced by the stakeholders' argument that while the levy is raised on the value of professional fees charged for projects,²⁷ the professionals involved in the delivery of building and construction projects are unable to access support for training.

The reviewers were persuaded that these groups can inform the Board about training priorities for courses relevant to those professions, including those funded by CITB, such as project management, costs estimation, applying building codes, dispute resolution, and various safety qualifications.

In the interests of developing the capacity of the whole sector, the UDIA would encourage further discussion, at the completion of this review, around capacity of professions outside of construction. For example, surveying, planning and engineering are just three examples that can have a material impact to development delivery. – Urban Development Institute of Australia (South Australia)

We support a review of the definition [of the building and construction industry] to better reflect evolving construction practice. We understand that consideration is being given to inclusion of people involved in off site fabrication and other emerging areas of construction activity. This definition should be further expanded to be inclusive of all participants in building and construction activity. – Australian Institute of Architects (South Australian Chapter)

²⁶ Submission of the Urban Development Institute of Australia (SA) Inc..

²⁷ CITF Act, Schedule 1A, clause 1(b)(i).

Understandably, the MLSA agrees with this proposition, however would also advocate for an increased focus on addressing the skills shortage present in the Landscaping industry. Landscape Construction is an ideal industry to provide alternative opportunities to Civil workers. Further, given the similarities between both sectors, specific training focuses that leverage the overlapping skills and knowledge utilised in both sectors could be a highly efficient use of the CITF. – Master Landscapers of South Australia

Ability to remunerate committee members

The reviewers heard feedback on the proposal that the Finance, Risk and Audit Committee be chaired by an external party, and on whether remuneration of committee members authorised by the Minister would help attract suitable candidates. The current Chair of the Finance, Risk and Audit Committee is the Board's Presiding Member, who is unremunerated in this role.

The Act presently does not allow for remuneration of Committee members. It would reflect good governance for there to be independent membership of the Finance, Risk and Audit Committee - either as Chair or as a member. It is appropriate that the Act facilitate this by permitting the remuneration of Committee members. This is appropriate for both the size of the Fund and the scale of long-term training plans.

Most respondents supported the suggestion; some respondents preferred to give the CITB the authority to choose the nominee. Similarly, there was broad support for the Chair of the Finance, Risk and Audit Committee to be remunerated in a similar way to the chairs of other committees.

The Board supports this recommendation on the assumption that the appointment of an independent Chair to the Finance and Audit Committee remains the responsibility of the Board. – CITB

Good governance practice that will allow for the attraction of a qualified Finance and Audit Chair to oversee the collection, management and use of the CITF. – Master Landscapers of South Australia

The Board is the medium to approve the Chair position, with the Minister to have discretion over remuneration arrangements. – Master Plumbers Association of South Australia

PART 3:

Levy

Overview

Recommendation 12 – The Minister investigate the benefits of a more robust, alternative levy collection model.

The Act prescribes a 0.25% levy rate on the cost of building and construction of projects with a defined project value threshold above \$40,000, inclusive of GST.²⁸ The levy rate is applied to the contract price or an estimate of the “reasonable market price”, assessed by reference to the labour and material costs and other inputs, and reasonable profit margin.²⁹

Section 24 of the Act stipulates:

1. The project owner in respect of any building or construction work is liable to pay the levy on that building or construction work.
2. The project owner must pay the levy to the Board or a collection agency –
 - a. before obtaining building approval for the relevant building or construction work; or
 - b. if no building approval is required, before commencing that building or construction work.

The project owner is defined as:

project owner in respect of building or construction work, means –

- a. if a person has been engaged (other than as an employee) to carry out, or to cause to be carried out (including by the use of one or more subcontractors) all, or substantially all, of the building or construction work associated with a particular project – that person;
- b. in any other case – the person for whose direct benefit the building or construction work exists on its completion.

To obtain building approval, the “project owner” must provide a receipt number to PlanSA for the payment of a CITB levy. For projects that do not require PlanSA approvals, there is no capture mechanism to require payment: payment effectively relies on an “honour system”. Furthermore, payment of the levy is required before construction starts – the point of the project at which there is the least certainty about the project value.

28 The Act establishes a ceiling of 0.5% as the levy rate. The decision to raise or lower the rate is made on a recommendation of the Board via regulation. The levy rate of 0.25% has not changed since the Act’s commencement in 1993. The reviewers are aware of only one recommendation to the Minister by the Board to change the levy rate, in February 2021, on the basis that the Fund’s reserves supported a decrease to 0.2%. No action occurred as the recommendation was made during the 2021 State election caretaker period.

29 CITF Act, Schedule 1A, clause 1(b).

The Act mandates that a project owner must notify the Board within three months of the completion of building or construction work if the actual value of the work deviates from the estimated value of the work by \$50,000.³⁰ Where the value of the work was underestimated, the project owner must pay to the Board an amount equal to the levy that would have been payable if the estimated value was the actual value of the work. If overestimated, or a project is discontinued or cancelled, a refund can be sought by the project owner.

PlanSA and local council interface

The South Australian planning system was overhauled in 2017 following passage of the *Planning, Development and Infrastructure Act 2016 (SA)* (PDI Act). Reforms to the planning system were rolled out in phases between 2019 and 2021. The reforms aimed to simplify, streamline and make more accessible planning applications and granting of decisions within reasonable timeframes.

Under the new planning scheme, applications may be dealt with by one or more of six prescribed authorities:

- the Minister for Planning
- the State Planning Commission
- assessment managers
- assessment panels
- accredited authorities
- local councils.

A planning application follows a pathway based on the description of the project and the level of technical expertise required to assess its appropriateness and conformity with the relevant Planning and Design Code. For example:

- the State Planning Commission handles SA Housing Trust developments, railway construction, mining operations, “restricted development”³¹, City of Adelaide developments that exceed \$10 million, and other types of development.
- government developments (which include those initiated by government departments) are deemed Crown Development and are assessed under section 131 of the PDI Act. Such developments are assessed by the State Commission Assessment Panel (SCAP), which considers an application on its merits and reports to the Minister with a recommendation.
- Local councils are predominantly responsible for assessing building work as defined under the PDI Act (this category of works may require a statement of compliance to be submitted at the completion of a project). Building works within this category are assessed according to their building typology, scale, location and other characteristics. These determine who may assess the application. For building and construction in this category, it may be a council, a council-appointed Council Assessment Panel (CAP) or an assessment manager who also determines the development pathway; that is, whether it is an Accepted Development (building consent only required), or Deemed to Satisfy Development (Assessment Manager or CAP).
- Impact Assessed (major) developments declared by the Minister and that usually require community consultation result in an assessment report which includes the relevant Minister’s assessment and decision and recommendations of consulted agencies (such as the Environment Protection Authority).
- Some development is classed as exempt, which excludes it from requirements of public notification and development assessment. This category includes minor building works such as roller doors, some decks and smaller water tanks.

30 CITF Act, sections 26 and 27. The amount of \$25,000 shown in the Act was increased via regulation to \$50,000.

31 The Restricted Development category includes building or development which may impact adjacent landowners, occur in a non-compliant planning zone or in an environmentally sensitive area.

The Review's analysis of the Act is that there are substantive implementation challenges that relate to levy payment, compliance and reconciliation. There are also concerns about the design and implementation of the scheme's payment method, especially regarding the triggers for payment. Specifically, the only capture mechanism is the building approval process, which does not marry with the scope of activity captured by the Act. The existing levy approach has created several issues.

1. The "project owner" payment process relies on self-identification and the Act's definition leaves it open for more than one person to identify as the project owner. Therefore, from a compliance perspective if the levy is not paid, it is difficult for the CITB to take enforcement action.
2. The system of self-identification also results in people identifying as project owners who do not meet the legislative definition. For example, the reviewers understand that a building designer or architect responsible for the design and building approval process of a project may pay the levy and, in the process, self-identify as the project owner (see case study below). This is largely due to the payment being required before building approval is received. There is no inbuilt remedy for this (other than the CITB rejecting the payment) and no mechanism by which the person ensuring CITB compliance can 'transfer' project ownership.
3. For large projects, there may be different stages and interpretation as to what "the project" is for the purpose of both project owner identification and levy calculation. The Review heard that different components of large projects may be contracted to different businesses and this can create confusion as to who is ultimately deemed the project owner responsible for levy payment. This enables a practice, reported to the Review to be common among large projects, where the obligation to pay the levy is "pushed along" to subcontractors, creating monitoring and compliance challenges.
4. With more than 70% of projects that provide Statements of Completion advising that variations have occurred, \$50,000 inclusive of GST is not a significant variation in construction costs. This results in many projects being required to meet a double administrative burden of payment and reconciliation.
5. CITB data shows a large proportion of project owners do not provide Statements of Completion, which means the CITB does not receive revenue from those underquoted projects. Enforcement is limited due to the issues discussed above. An examination of projects registered with the CITB over the five-year period to June 2022 showed that more than one quarter of completed projects had not provided Statements of Completion³². While variations submitted for completed projects included both reductions and increases in the levy value owed, collectively they resulted in a net average increase to the Fund of approximately \$920,000 a year. Modelling suggests that if this average is extended to the potential revenue of all completions, there is a potential 'levy leakage' of more than \$330,000 a year.

The Issues Paper proposed that if the levy was to be calculated by project value, the definition of "project owner" should be changed so that the levy is payable by the landowner or lessee. This would simplify who must pay the levy.

However, the proposition was not generally supported. Instead, respondents suggested reviewing the timing of payments, payment at the commencement of works and reconciliation on end value, and support for payment being required as a condition of the development approval.

32 Derived from CITB Statement of Completion Analysis, FY2017-22.

Case study: Failure to lodge a Statement of Completion

There may be many reasons for failing to lodge a Statement of Completion. One reason is the double administrative burden the current system requires, with assessment required at both the front end (estimate) and on completion (final cost). Another is that there are limited compliance levers. A third, which the reviewers observed in their analysis of levy payment receipts, relates to the disbursement of levy payment responsibilities to subcontractors, or levy payment by those not involved in the full construction process.

One specific example relates to the importance of reforming the “project owner” definition to capture a payee with full oversight of the project. This is currently not always the case. For example, when a new home has been designed by an architect or building designer, currently this contractor may identify as the project owner and pay the levy as part of the building approval process. The home owner then finalises their engagement with the architect/designers and takes their plans for a quote and eventually engagement with a builder. Once the architect has completed their services they may not be involved in the construction, or know if the reasonable estimate of \$2,000 sqm on which the levy was originally paid is accurate. The actual build cost may vary significantly from the original design estimate, but the architect is no longer involved and is unable to advise of any variations.

The CITB then relies on an “honour system” payment whereby the builder or homeowner will know what the original estimate was for the levy payment purposes, will check this against actual total costs, and then go back to the CITB to advise of any variation and pay any difference.

The payment trigger is limited because not all activity for which a levy is liable to be paid requires building approval. Leviable work, such as non-structural work (fixtures, some types of demolition, air conditioning), certain council works, certain essential infrastructure, car parks, some state heritage works, minor building upgrades, additions and fit-out works,³³ electrical work, and landscaping,³⁴ may or may not require building approval. In the absence of the compliance trigger of approval for these leviable projects, payment is entirely reliant on an awareness of the requirement to pay the levy and an honour system that payment will be made.

Case study: Non-building approval

When an occupier manages an office reconfiguration, the occupier may be the project owner and so has to be aware of the levy requirement. If the project value is above the threshold amount, the occupier would have to be aware of the responsibility to contact the CITB, advise them of the project value, and pay the levy.

This would similarly be the case with a residential kitchen or bathroom renovation that is subcontracted by the owner. As CITB has little line of sight to these projects their capacity for capture and compliance is severely limited.

³³ Note, projects involving fit out will require approval if they involve a change in land use or a state or local heritage place/area.

³⁴ These are listed in Schedules 4, 4a, 5 and 13 of the *Planning, Development and Infrastructure (General) Regulations 2017 (SA)*.

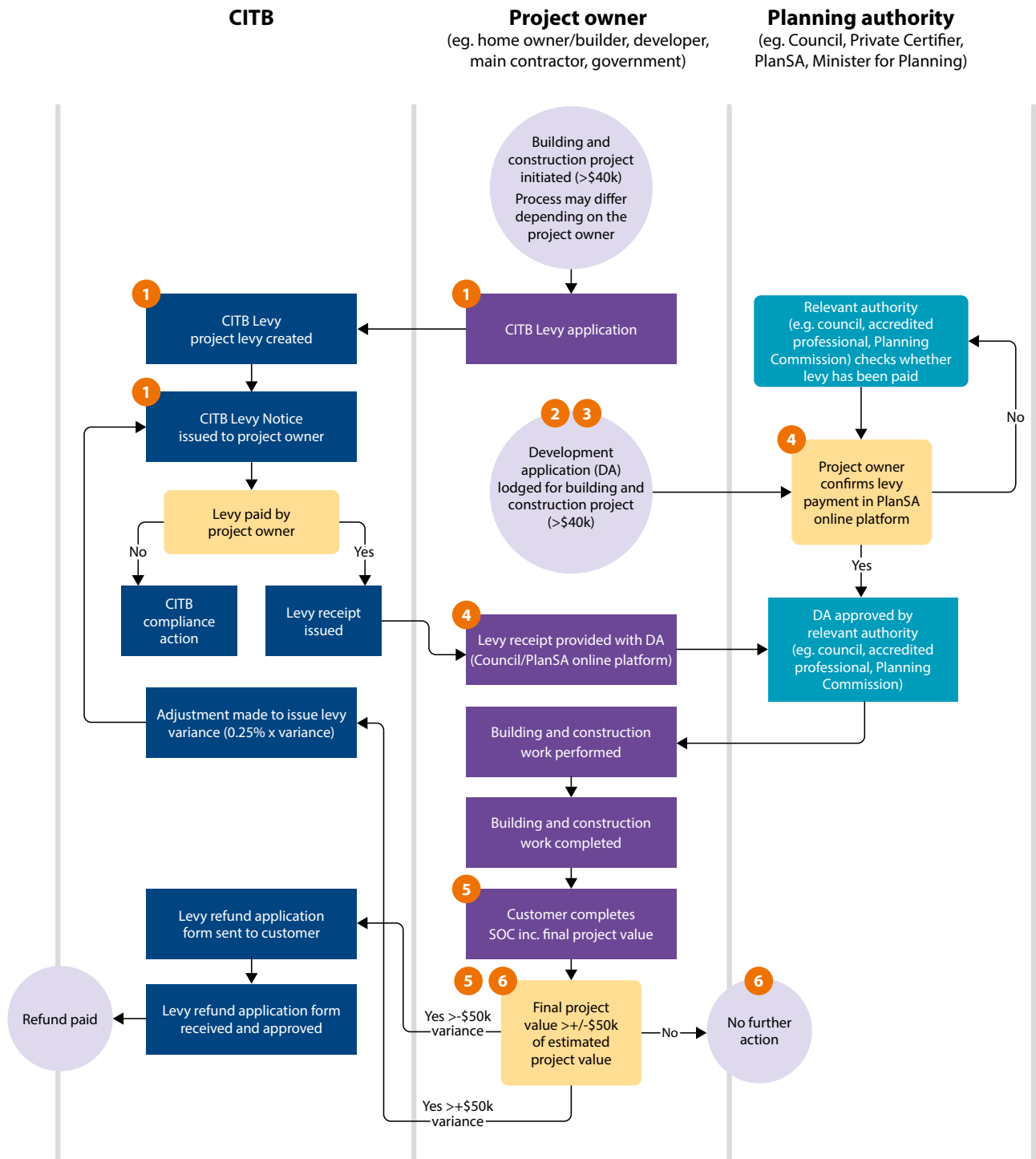
6. Under Section 24(4), government agencies are not required to pay the levy prior to building approval being granted; the obligation instead attaches to the person engaged to carry out the work before they commence the work. There is no system for capturing and monitoring compliance for these projects. Further, due to the scale of these large projects, many of which are staged developments, there are practical and definitional difficulties in calculating project value on the multiple labour and materials inputs. Again, the honour system of payment is relied upon as the only available compliance oversight. This is labour-intensive and complicated. The CITB must correlate project owner payments (of which there may be many, depending on the definition of the “project” and may be paid by subcontractors not easily mapped to the announced project) with published government contracts that extend over long periods.
7. The Act requires that building approval by local councils is contingent on proof of the levy being paid (i.e., a properly endorsed receipt from the CITB). In practice there is little incentive and no integrated system for councils to validate levy payment. The robustness and consistency of levy payment validation across councils is difficult to assess. Anecdotally, the reviewers heard it may be highly variable.
8. The system can be “gamed” for small projects. There is a perverse arrangement whereby the levy threshold (\$40,000) is less than the variation for a leviable project (\$50,000). The exploitation of this loophole results in an unfair and uneven distribution of small value project payments.

Case study: Gaming a low-value project

If as part of the approval process the project value estimate is under \$40,000, no levy is payable. A variation payment is then only required if that variation is over \$50,000. Therefore, a project owner may estimate the cost of a kitchen renovation at \$39,999. No levy is payable as part of the approval process. If a decision is then taken to upgrade the project after approvals, such as to use stone rather than laminate, the total cost may exceed the original threshold of \$40,000 but the levy is not payable unless the estimate plus the variation is less than \$89,999. As the variation amount is greater than the original threshold, a perverse incentive to underestimate small project values is created.

9. The current system is complex to navigate, which creates payment leakage risks. The complexity of the levy payment process and related inherent risks is demonstrated by the diagram below.

Diagram 1: Levy payment process flowchart



Inherent risks

- 1 Assumes proactive application by project owner; CITB has no or low visibility of leviable projects at this point
- 2 Cost of fit-out not required by PlanSA online platform, but is a CITF leviable item (leakage risk)
- 3 Demolition does not require DA but is a CITF leviable item (leakage risk)
- 4 No validation of levy payment in PlanSA online platform (leakage risk)
- 5 Notification of variance to original project value relies on project owner honesty (leakage risk)
- 6 Projects that start below the \$40k threshold can be varied by up to +\$50k and still not pay levy

It is the reviewers' view that if government was to design a payment system today to levy construction activity for the purpose of funding investment in the skills and training of a workforce, it would not be one based on estimated project value that then requires correlation with final cost (and a double administrative burden); one in which the system was reliant on the honesty of levy payers or multiple payment confirmation systems which have few compliance checks; one where there are multiple opportunities for payment avoidance and leakage; or an ambiguous system regarding who is responsible for paying the levy within a system which is highly complex to navigate with weak or non-existent checkpoints.

The reviewers tested with stakeholders the concept of a different approach to levy collection, but there was no widespread support for change. They also could not find models elsewhere that would provide a robust alternative. There was insufficient time to commission detailed cost-benefit modelling on alternative system designs; some respondents reasonably noted that in the absence of such modelling, they could not consider the merits of change.

It was also beyond the scope of the Review and its timing to propose a detailed alternative levy collection system. Nevertheless, the reviewers felt compelled to register their concerns with the current model and its implementation.

The reviewers encourage the Minister to investigate the benefits of a more robust levy collection model.

Where a future review should focus

A recommendation on an alternative system has not been offered due to the absence of available modelling and time required to investigate viable alternatives and issues. Stakeholders would also require substantially more engagement than was possible within the scope of this Review.

However, the reviewers suggest that alternative models be investigated – for example, an activity-based or payroll-based levy that draws on data that has more robustness and is in many cases already required to be generated for other purposes. Examples that could be used include Business Activity Statements, payroll tax and portable industry long service leave collection.

Any alternative to a project-based levy should be supported by detailed cost-benefit analysis and cost minimisation for the Fund's administrators and payers.

In the absence of a tested and modelled alternative collection method, the Review has considered where improvements can be made to the existing approach of the Act. A number of recommendations in this report would either not need to be adopted, or could be adapted accordingly, if the recommendation about an alternative method for imposition of the levy is adopted. Pending this significant reform, the reviewers considered elements of the existing levy system and recommended improvements. These are dealt with in the remainder of this report.

Project owner

Recommendation 13 - The Act require for non-government projects the project owner be defined as the person/body engaged to deliver all, or substantially all, of the construction project. Only in circumstances where, at the time of levy payment, no person or body has been engaged to deliver substantially all of the project should the project owner definition default to the person benefiting from the construction project. For government projects, the project owner should always be the government agency responsible for delivering the project.

While the levy is paid on an estimate and requires notification of a variation of an actual final cost, responsibilities for levy payment should clearly and unambiguously identify the project owner. Specifically, it should be clear that:

- the person responsible for the levy payment is the project owner, who is the person/body who has been engaged (other than as an employee) to carry out, or to cause to be carried out (including by the use of one or more subcontractors) all, or substantially all, of the building or construction work associated with a particular project. This is the only person/body who is responsible for payment of the levy and this cannot be passed on to any other person/body.
- only when no such person/body is engaged, then the project owner is identified as the person for whose direct benefit the building or construction work exists on its completion. The system should not restrict other service providers from making the levy payment on behalf of the project owner, but the project owner must still be recorded as the responsible person for the levy payment and reconciliation.
- for government-funded projects, the project owner is the government agency responsible for a government building or construction project for the purposes of levy payment (this recommendation is further detailed in the section that discusses capturing leviable activity that falls outside of usual development approval processes).

This will remain an imperfect system, but it should:

- improve accountability for who is responsible for notifying final variations, namely for private construction activity it being limited to one of two persons: the person substantially delivering the construction project, or in absence of the former at the time of paying the levy, the person benefiting from it
- limit confusion that arises from passing on of levy payment obligations to sub-contractors or other construction service providers
- limit the occurrence of the project owner being recorded as someone who is involved only in the initial phase of the project, who then exits and has no visibility of final costs
- increase transparency and accountability for who is responsible for payments on projects that fall outside of the usual development approval processes
- increase transparency and accountability for government-funded projects.

The levy threshold and rate

Recommendation 14 – The \$40,000 levy threshold be lifted to \$100,000, with no change to the levy rate of 0.25%.

Recommendation 15 – The threshold at which the levy is payable be adjusted for CPI every three years via the Regulations; and the reference under section 23 (Exemptions) to \$15,000 be removed.

Recommendation 16 – GST should be excluded from the calculation of the project value for the purposes of the levy.

Recommendation 17 – The methodology for calculating the value of building and construction work under clause 1 of Schedule 1A be reviewed and if anomalous results are found depending whether the project value is derived under Schedule 1A, clause 1(a) or (b), this be addressed through appropriate amendment.

Recommendation 18 – Investigate inclusion of a definition of “professional fees” for the purposes of Schedule 1A. In particular, clarify whether professional fees must solely relate to building and construction work or can also include project-related design work, project/contract management, or the supervision of construction work by in-house staff or consultants. The Board should work with relevant professional bodies to determine whether a definition is more appropriately inserted into the Act or developed as Board policy.

Project value threshold

The project value threshold has been increased twice since the Act commenced in 1993.³⁵

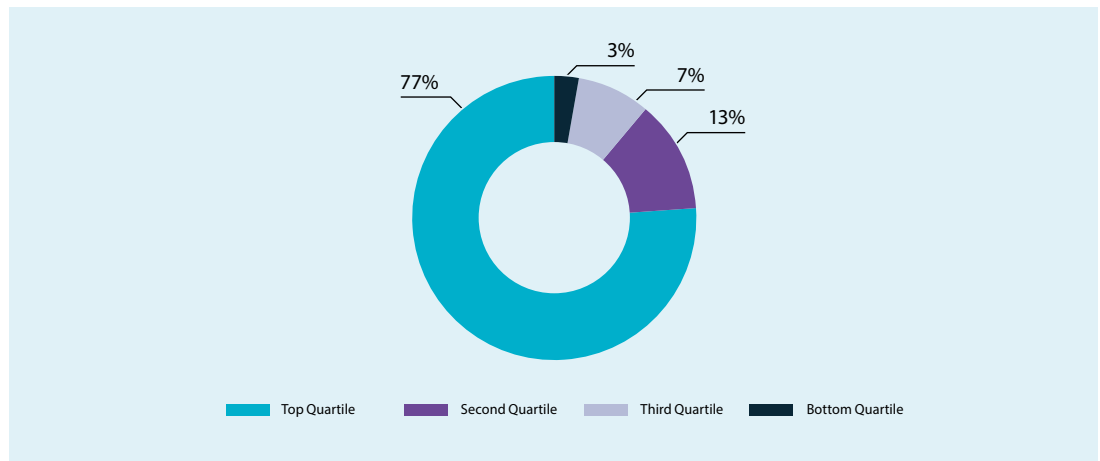
The Review has analysed the payments into the Fund in 2021-22. It found:

- 54% of revenue is collected from the top 5% of payees
- 78% revenue is collected from the top 30% of payees
- 1.9% of revenue is collected from the bottom 20% of payees
- 2.6% of revenue is collected from the bottom 30% of payees.

The chart below shows that the bottom quartile of project payers represent a very small amount of the overall levy collection, whereas the top quartile of project payers pay over three-quarters of the annual collection.

³⁵ The original Act set the project value threshold at \$5,000. This was increased in 2001 to \$15,000. In 2017 the threshold increased from \$15,000 to \$40,000 as a result of the then Government’s review of statutory boards and committees. Increases in the project value threshold are operationalised through a change to the Regulations. However, the original amount of \$15,000 is still stated in the principal Act. As part of the drafting process, the Act should refer to an amount prescribed in the Regulations and remove reference to the original amount in the Act.

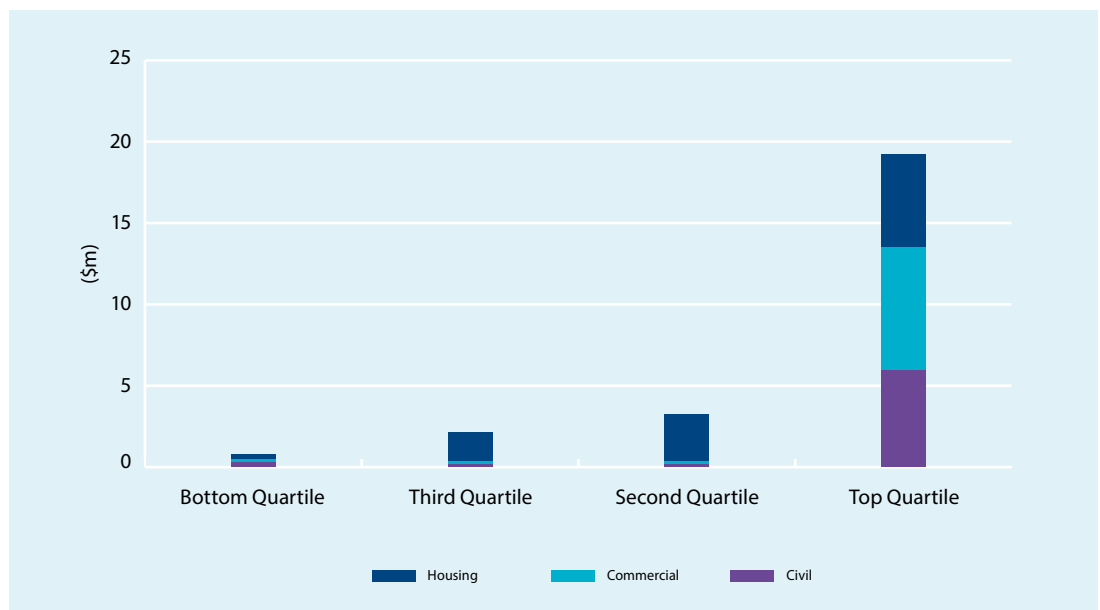
Chart 2: Share of levy raised by project quartile, 2021-22



Source: CITB

The graph below also shows the spread of payments across the quartiles by each sector, noting that civil works often occur in housing and commercial projects but are not distinctly captured.

Chart 3: Value of levy raised by project quartile and sector, 2021-22



Source: CITB

This suggests the \$40,000 threshold results in a high transactional burden on low-value levy collection for a meaningful proportion of payees. Further:

- these low-value transactions commonly fall under Section 24(2)(b), where building approval is not required, so compliance oversight is limited and there is an over-reliance on an “honour payment” approach
- most of these projects are completed by small businesses, sole traders, or owner-occupiers for which the red tape burden is disproportionately high
- all sectors would benefit from an increase in threshold as each of them consistently contributed a sizeable proportion of low-value transactions (the lowest proportion over five years was recorded by commercial in 2021-22, which still represented 25% of payments - see Table 1).

In consideration of these factors, the reviewers recommend an increase in the threshold value in the context of the associated administrative burden and relatively low revenue impact when compared with the potential benefits of an increase. Accompanying this recommendation, they recommend that the reference to \$15,000 under section 23 (Exemptions) be removed.

The Review commissioned modelling on the revenue losses to CITB if only projects over \$100,000 were required to pay the levy. Using a five-year average modelling (2017-22) it was found that the annual average levy revenue reduction would be \$548,672 or 2.28%. Revenue losses from an increased threshold could be minimised if offset against transactional costs and compliance, and further offset if certain exemptions were removed and compliance and reconciliation processes were improved.

Table 1 shows the calculations if a \$100,000 levy threshold had been applied to the 2021-22 financial year. It shows:

- 3,877 low-value projects would have been exempt from payment
- a 22% reduction in levy transactions
- each industry sector would benefit materially from the increase in the threshold
- a 2.3% reduction in revenue.

Table 1: Projects with a value of \$100,000 or less, 2021-22

Sector	Percentage of projects	Number of projects	Amount of levy collected	Percentage of levy collected by sector
Civil	45.7%	1,770	\$256,980	41.6%
Commercial	24.1%	933	\$154,832	25.0%
Housing	30.3%	1,174	\$206,344	33.4%
Sum	100.0%	3,877	\$618,156	100.0%
Total projects levied (2021-22)		17,600		
Total levy revenue (2021-22)			\$26,960,000	
Percentage impacted		22.0%	2.3%	

Source: CITB

Most respondents supported increasing the threshold from \$40,000, if exemptions were reduced and the levy continued to be based on project value.

Respondents also pointed out that inflationary pressures on the cost of labour and materials were further justification for increasing the project value threshold.

The Property Council would support the reasoning of this proposition if the base were widened, and revenue increased. In addition, it should be noted that given inflationary economic conditions the threshold of \$40,000 may no longer be suitable. – **Property Council of Australia (South Australia Division)**

The \$40,000 threshold should be increased, regardless of exemptions. – **Housing Industry Association (South Australia)**

The administration required to collect the levy should not exceed the funds attached by the levy calculation. As such, the MLSA would advocate for an increased threshold in these circumstances to ensure efficient resource allocation. – **Master Landscapers of South Australia**

Among the respondents who opposed the proposition, only one provided a rationale, which rested on a related proposition about an alternative collection method whereby project value would be replaced with a wage-based revenue mechanism (of the type raised in the Issues Paper).

As previously indicated, we support the levy being calculated on an employee basis. This would render the threshold obsolete. We do not consider that the collection of the levy should be considered too administratively burdensome in the current circumstance. – CFMEU & CEPU (South Australia)

Rate

There is no explicit mechanism under the Act that triggers a review of the levy rate. A change to the levy can occur through regulation.³⁶

The reviewers consider that in the absence of an alternative method of levy calculation, the 0.25% levy rate remains an appropriate rate for the Board to fulfil its role and functions under the Act.

This proposal was widely supported with no opposition recorded among respondents.

The current rate remains sufficient to fulfil its role under the Act, subject to response to Question 21 [the levy should apply to a project's value excluding GST] and any further amendments to the Act that may increase or reduce the levy payable. The Board recommends that levy rate and value should be included within the Regulations. – CITB

We do not support any reduction in levy. It is our view that there is presently insufficient information available to determine whether or not the levy rate is sufficient. We do not have available to us information that would enable us to be confident that the current levy is being captured in all appropriate instances – CFMEU & CEPU (South Australia)

CPI

Many government-levied fees and charges are adjusted annually in accordance with the consumer price index.

The reviewers suggest that, given the devolved nature of this levy and the current collection arrangements, regular adjustments would add to the administrative burden of the levy for both the CITB and payees. However, reviews at longer intervals, such as every three years, would ensure that the threshold rate reflects inflation prices.

GST

The reviewers consider that the levy is effectively a tax paid by those engaging construction services, for which they are already paying GST.

The Issues Paper invited responses to a proposition to exclude GST from a project's value in calculating the levy charged, assuming the levy remained based on the project value. This issue has been contentious since the introduction of the GST and was considered by the KPA Review. The Review found that only one jurisdiction, Queensland, excludes the GST component from the project value for the purposes of calculating its levy. This occurred through a change to the Queensland legislation in 2014. A 2020 consultation on the Queensland scheme re-examined that decision and recommended maintaining the exclusion of GST, observing the opposition to charging of fees by one level of government on fees charged by another level.³⁷

Nearly all respondents to this Review supported excluding GST from the levy calculation, with many arguing the inclusion of GST in the calculation of project value amounted to a tax on a tax.

³⁶ Changes to the levy rate require a recommendation of the Board. Prior to the 2019 Amendments, at least one representative of the nominated employer associations and one of the nominated employee associations was also required to be present to carry a vote to change the levy rate.

³⁷ *Portable long service leave in Queensland's building and construction industry. Proposed changes to QLeave levies Decision Regulatory Impact Statement, March 2020.*

Basis of calculating the value of building or construction work

Schedule 1A, clause 1, permits the value of building or construction work to be calculated using one of two methods:

- if the work is carried out under a contract (or a series of contracts), the total contract price
- in all other cases, based on an *estimate* of the reasonable market price including –
 - the value of the labour, necessary services and fees (including professional fees) payable in relation to the work; and
 - the value of building or construction materials; and
 - the value of any prescribed components that are to be installed as part of, or in association with, the work; and
 - a reasonable allocation for a profit margin; and
 - the value of any overheads.

The Review is informed that this formulation may result in anomalous outcomes for identical projects, depending on whether the works are carried out under a contract or outside a contract arrangement. If the work is conducted outside a contract arrangement, plant and equipment that meets the description referred to in the following clause 2(b)³⁸ can be deducted from the project value. Such an option is not available where a project's value is contained in the total contract price. Therefore, two identical projects which proceed under the clause 1(a) or 1(b) method will, assuming no deviation in the final price, result in different levy amounts being paid. This is an inequitable result that should be addressed.

Professional fees

The Act was amended in 2000³⁹ to include "professional fees" within the definition of inputs to be taken into account in calculating the levy under clause 1 of Schedule 1A of the Act. However, the term has not been defined, and so it is left to project owners and the CITB to interpret which professional fees are included.

The reviewers suggest there is sufficient ambiguity around "professional fees" to warrant exploration of a definition to guide project owners and the Board, particularly in relation to:

- "design and build" fees and related work
- project management and construction management during construction
- supervision of construction work whether performed by in house staff or consultants
- offsite work
- maintenance work.

Whether or not a definition is more appropriately inserted into the Act or developed as Board policy is a question for the Board to determine in consultation with the professions affected.

38 Clause 2(b) states:

For the purposes of clause 1(b)(iii), prescribed components [...] will be taken not to include–

(i) plant or equipment–

(A) that is used solely for the purposes of a process that forms part of the undertaking carried out within a building, structure or other place; and

(B) that is not installed as part of, or within, a structural component of a building, or as an integral part of a structure; and

(C) that is not otherwise incorporated (or substantially incorporated) as part of a building, structure or other place (but disregarding for the purposes of this subparagraph an incorporation by virtue only of the plant or equipment being a fixture);

39 *Construction Industry Training Fund (Miscellaneous) Amendment Act 2000* (SA) added professional fees to Clause 1 of Schedule 1A as an item to be included in the value of building and construction work for the purposes of calculation of the levy.

It is important to resolve this point because the Board's decisions about what training is to be funded is partly contingent on identification of the professions that contribute to the Fund. As the Australian Institute of Architects (South Australian Chapter) observes:

The estimated value of building or construction, as defined in Schedule 1A, which is used to calculate the levy payment, includes 'the value of the labour, necessary services and fees (including professional fees) payable in relation to the work'. Therefore, while the levy includes a proportion of funds raised against the professional fees charged for projects, the professionals involved in the delivery of building and construction projects are unable to access support for training.

...

We also note that other management and administrative participants involved in building and construction activities are able to access support for training and that the CITB subsidises training in design, drafting, WHS, legislation and compliance. Distinguishing between management and administration staff employed by a contracting business as opposed to those employed by a consultancy business appears to be an artificial distinction, and one that works against the objectives of the Act.

...

Architects and construction consultants are able to access WHS related training –White Card Training, Working Safely at Heights, WHS Compliance etc – which are required to meet contractor's site access protocols and to safely undertake site related activities. – Australian Institute of Architects (South Australian Chapter)



Compliance

Recommendation 19 – The Board should consider undertaking a compliance and education campaign with local councils to ensure consistent awareness and application of the Act’s requirement that building approval is contingent on proof of levy payment.

Recommendation 20 – The Board’s functions include oversight and compliance of revenue collection for the Fund, supported through application of CITB resources.

Council approvals as a compliance mechanism

The Act requires that building approval is contingent on proof of the levy being paid (i.e., a properly endorsed receipt from the CITB). Overall, where approvals are required, audits of levy payments for certain works suggest that the likelihood of the levy being paid, or the correct levy, increases if a council or private certifier is required to provide approval⁴⁰. Notwithstanding this, the Review was informed that:

- it is suspected that there is limited checking of proof of levy payment by some councils and substantiation of levy payment is not a high priority
- some councils rely on legacy systems that do not take advantage of verification enabled by the PlanSA online platform. For example, while some councils that have not migrated to the PlanSA online platform do reference the CITF levy, there is no mention of the requirement to pay as a condition of approval.
- in practice, there is little incentive and often no integrated system for councils to validate levy payment. As a result, the Review has heard there can be variability in the veracity with which councils fulfil this requirement.

The process for building and development approvals has been overhauled in recent years in South Australia (see the text box on page 37 for more detail) to enable applications for various types of building and development approvals to be handled expeditiously and with minimum red tape.

Local councils are in various stages of integrating their building approvals processes with the PlanSA online platform.

The Review understands that while the PlanSA online platform requires the applicant to input a CITF levy receipt number, there is no systematic validation of that number.

Overall, the use of local councils as the primary point of verification of levy payment has limitations. There also appear to be varying levels of awareness within councils of the levy payment requirement.

40 This is based on the Review’s interpretation of a Revenue Leakage Discussion Paper prepared for the Board in May 2020.

Role of the Board

The Board's functions do not have an explicit compliance oversight requirement. When the reviewers engaged with stakeholders, there were mixed views about the relevance of compliance matters to the Board. However, analysis of the data and systems suggests that compliance is a challenge for levy collection and the integrity of the Fund.

It was advised that since the last amendments to the Act, the Board decided to reduce both investment in compliance activities and compliance resourcing. It is understood that the current Presiding Member and CEO are seeking to rectify this reduction. The reviewers believe the Board should be actively responsible for compliance oversight and that this should be listed in its functions, so the Board can be confident that current systems ensure:

- revenue collection equates to leviable activity
- that all aspects of the construction industry consistently and equally comply with paying the levy
- the integrity of the fund is protected through the Board being confident levy collection processes are transparent, accurate, and timely
- the Board maintains credibility with the sector in its oversight of the Fund.

For the Board to be confident it is fulfilling this function, the CITB must be adequately resourced. There was support for systematically improving compliance effort among stakeholders.

Compliance with the requirements under the Act is obviously important due to its impacts on the funds collected and looks to combat the 'free rider problem' associated with the use of industry levies, i.e. that despite not directly contributing an industry participant may benefit from funds accumulated through the levy. However, HIA would be concerned if funds collected via the levy were used for compliance and education activities instead of training etc. – Housing Industry Association (South Australia)

We strongly agree that much more must be done to ensure compliance with the requirements of the Act, particularly the requirement to pay the levy. We are extremely concerned that decisions were made by the previous board to reduce the resources available for compliance and data analytical capacity... We note that in our view enforcement would be significantly more manageable under an employee-based levy. – CFMEU & CEPU (South Australia)

A vast majority of the industry is compliant and it is not equitable for companies who make payments to be funding the industry training, which is accessible to all employees. The companies that do not contribute to the Fund have a financial and commercial advantage and the companies who are contributing to the future of the industry are at a disadvantage. – Master Builders Association of South Australia

The MLSA advocates that the CITB increase resources devoted to education and compliance, in line with the ability of these additional resources to generate additional funds... improved factsheets on building and construction activities that are leviable, simpler forms and better linkages with PlanSA would significantly contribute to improving compliance and the user experience and outcomes. – Master Landscapers of South Australia

Capturing leviable activity that falls outside of usual development approval processes

Recommendation 21 – Government work with the CITB to introduce transparent reporting and reconciliation options for construction industry projects that are not captured by the usual building approvals process.

Recommendation 22 – The CITF Act and any other relevant legislation be amended to provide:

- that the levy for government building and construction projects is payable by the government agency responsible for its delivery (including those assessed by certifiers)
 - that the levy for State Planning Commission assessed projects is paid before approval is issued by the State Planning Commission; and
 - that any approving authorities for building and construction projects under other legislation should also require evidence of levy payment before issuing approval.
-

What is not captured

There are activities that are leviable under the Act that do not follow the usual development approval process. While the Act imposes the obligation on the project owner to pay the levy, it is difficult for the CITB to identify these projects and determine whether the levy is being paid. This occurs when:

- the levy is payable on projects that do not require building approval (such as some demolition or fit outs)
- the levy is payable on projects that are approved by private certifiers (such as Crown agency projects)
- the levy is payable on projects of significance that are considered by the State Planning Commission
- projects may be approved under specific legislation, such as mining, highways or for a hospital
- council (building) and planning and development approvals processes do not align. For example, approvals processes do not capture certain categories of works such as certain council works, some essential infrastructure, car parks, minor building upgrades, and additions, etc., as predicated by Schedules 4, 4a, 5 and 13 of the Planning and Development Regulations. Other works may be exempt due to their being authorised under other Acts, such as for mining or highways.

In the absence of the building approval trigger, it is unsurprising that reviews and research commissioned by the CITB have found no or low compliance with levy payment concentrated in:

- civil (a very broad category that includes both government and private building and construction) including excavation, earthmoving and site preparation
- demolition
- park, reserves and landscaping
- utilities (water, gas, sewerage and electricity)
- pipe and cable laying.

It is noted that it is currently within the powers of the Board to invest in education about and awareness of levy requirements. Equally, removal of ambiguity in project owner definitions may also assist with compliance. Ultimately, though, while project value is the leviable method, there are limited triggers available to support compliance in non-building approval activity.

State Government

Section 24(4)(b) of the Act exempts payment of the levy at the time building approval is sought if it is a government project that has yet not engaged a person to carry out the work. Section 24(4)(d) requires instead that “the person or body engaged to carry out the building or construction work must pay the levy before the commencement of the work”.

It is a laborious manual process for the CITB to reconcile payments received with payments due from projects outside the building approval process. A case study example is provided below. In the absence of any central or coordinated mechanisms to capture and reconcile levy payments with government projects, the current levy system is at significant risk of leakage through sub-contract payment devolution⁴¹.

The State Government has a large number of construction projects underway each year for which payment of the levy can be deferred if approval is sought, but it has not been determined who will complete the works⁴². These may include redevelopment projects, road projects, hospital upgrades, a tramline upgrade, sporting centre upgrades, an airport upgrade and upgrades to SA Water drinking water supply and wastewater treatment infrastructure.⁴³

All projects valued at more than \$4 million are automatically referred to the Public Works Committee (PWC), and in 2022 the Committee provided reports on 24 public works projects.⁴⁴ There is also a large number of other infrastructure projects undertaken by government. For example, there are more than 100 projects currently listed on the Department for Education major school upgrades list, ranging in value from \$1.3 million to \$98 million. Similarly, there is a large number of health infrastructure projects underway.

Monitoring reports published by the PWC is an option for the CITB, as from this it could extract information on the potential project owner and value of the project. With this information the CITB could then manually search its database for payment against either the person/body awarded the project or the address of the project. For projects of a value of less than \$4 million⁴⁵ there is information available on some government websites, such as the Department for Infrastructure and Transport and PlanSA, but there is no comprehensive central repository that the CITB has access to.

To measure the ease of undertaking a reconciliation of a government project, the reviewers undertook a random case study of a site (see text box below) to identify what information was public and how easy it was to verify if the levy had been paid for this project. This exercise demonstrated that there are information gaps and disconnected reporting systems that the CITB must contend with in administering levy collection for these mainstream projects.

For the CITB to confirm whether a levy has been paid, it must monitor relevant departments' websites and manually extract and enter data into its own database that includes project details such as the value and who has been engaged to deliver the project. The CITB is then required to cross reference this with manual searches.

41 The CITB and the Department for Infrastructure and Transport both have an interest in ensuring there is a sufficiently large and skilled building and construction workforce to meet the State's infrastructure needs. CITB inputs into sustaining a skilled workforce are also important for assisting the Government meet its workforce participation goals, for example, ensuring South Australian workers, apprentices, trainees and Aboriginal workers deliver a minimum number of labour hours on major infrastructure projects.

42 This is permitted by CITF section 24(4).

43 Report 2018-2019 PWC Annual Report, p.5

44 Sourced from www.parliament.sa.gov.au/en/House-of-Assembly/Tabled-Papers-and-Petitions

45 Premier and Cabinet Circular PC015 - Procedures for submissions seeking the review of Public Works by the Public Works Committee: By virtue of section 16A of the Act, public works are compulsorily referred to the PWC if the total amount of money provided by Parliament or a State instrumentality to be applied to construction of the work will exceed \$4 million (GST exclusive). In this case, no public monies may be expended on the actual construction of the public work until the PWC has presented its Final Report.

The Review's attempted reconciliation process on the randomised case study was complex. Whilst the Reviewers were ultimately able to verify that most of the levy had been paid, the levy payment could be late and less than what should have been paid according to the revised project value at the commencement of the project. Payments were also made by at least two, and potentially three, different "project owners", none of whom had full responsibility for the project or were listed on the PWC documentation, nor whose payments easily correlated to the project – emphasising the challenges faced by the CITB with reconciling the levy collection process.

The reviewers recommend the government and CITB work together to find ways to better reconcile levy payments for government projects. At a minimum the government agency responsible for the project delivery should be identified as the project owner for the purpose of levy payment (discussed above).

The reviewers provide below some examples of how the government might assist in the improvement of monitoring levy payments.

- Premier and Cabinet Circular 15 requires that submissions to the PWC include "An outline of the project management structures and processes for implementing the work". This could specify that the project owner for the purpose of levy payment is identified in this structure.
- The Case Study's PWC final report lists the professional services contractors' fees, project management costs and disbursements in Appendix 2. These are detailed costs which go down to 0.17% (for certifier costs). The CITB levy is not itemised. If the PWC required that the CITB levy was also listed in this Appendix, there would be a transparent and clear mechanism for the CITB to track expected levy payments for projects over \$4 million.
- Equally, the Case Study report to the PWC states: "The Department of Treasury and Finance (DTF) has evaluated the financial information presented and considers that it is in accordance with the DTF guidelines." If the DTF guidelines required the inclusion of details regarding the amount and person/body responsible for levy payment this too could increase transparency and monitoring for reconciliation purposes.

A randomised case study redevelopment: project owner

An Adelaide education redevelopment project is valued at almost \$9 million, representing a payable levy of \$22,275.

A report to the Public Works Committee detailed that the development application was to be lodged in January 2022, the contract awarded in April 2022 and construction to commence in May 2022.

Therefore, according to the Act, by the time of writing this report the levy should have been paid, as funding had been allocated, a project manager appointed, a builder appointed, and construction commenced.

The report lists the Program Manager (PM) as “responsible for the project management, construction management and cost management of the works reporting to the Department”.

Under the Act’s definition, the PM could qualify as the project owner responsible for payment of the levy for this project. While this project management company had paid the CITB levy for a number of other projects, payment for this project was not identified by the CITB in 2021-22 and a review of payments made by the PM in earlier financial years did not reveal the payment.

Neither the Department for Education nor the Department for Infrastructure and Transport, either of which could also be project owners under the Act, are recorded as having paid the levy.

With the project owner not identified through the Public Works Committee process, further investigations determined that an alternative project owner, for the purposes of levy payment could be “B Constructions”, as it was listed on the Department’s website as the builder engaged to deliver the project. Again, while “B Constructions” paid the CITB levy for a number of other projects, payment for this project was not detectable for this project.

When a further search was undertaken of the address of the school in levy receipts, “C Group” was recorded as having paid \$1,376. There is no public information of what role (if any) this group played in the delivery of the project and, if so, to what aspects this levy payment relates. This may have been a subcontractor on the redevelopment project or another project at the same location.

When a further search of the payment database was undertaken, two levy payments appeared to have been paid for this project, although payment was late and did not equate to the estimated cost on the Department’s website (noting this may be addressed in reconciliation of final cost). These payments were not easily identifiable and required a dedicated manual search.

As there is no reconciliation mechanism available to the CITB for government projects, a similar manual cross reference is required to confirm payment has been acquitted for each individual government project.

The Review included this case study exploration to identify the ease or difficulty of the payment reconciliation process. The reviewers found the process time-consuming and were unable to reconcile whether full payment had been made without detailed, cross-referencing investigation.

The Review heard that while the government procurement of construction services includes the CITB levy within the budget allocation, reconciliation can be difficult to determine when payment responsibility is passed on to multiple sub-contractors for different elements of a project. The Review’s examination of this issue confirms this.

This example also highlights how difficult it could be for the CITB to identify that a levy payment that should be made has been, and who to hold responsible when it has not.

There would be considerable benefit to the CITB and government in working more closely to initiate changes to internal processes that would increase transparency and improve monitoring of CITB levy payments. In addition, if government agencies are responsible for payment of the levy, and not contractors, payment audits would be simplified.

When tested with stakeholders, respondents were overwhelmingly supportive of the government working with the CITB to identify reconciliation options for construction industry projects that are not captured by the usual building or planning approvals process.

In the case of government projects, the practice facilitated by section 24(4)(d) of the Act of devolving responsibility to the person engaged to carry out the building or construction work creates risks for payment and an inability to easily determine if the levy has been paid.

It is the reviewers' view that the body in the best position to determine an accurate project value is the government agency responsible for its delivery. The work of the CITB would be simplified if payment of the levy for government projects that do not follow the usual building approval process required government agencies to transparently report the levy payment in public documents, such as PWC reports, and be responsible for this payment.

Exemptions

Recommendation 23 – Subject to consultation, remove the exemptions in:

- Regulation 13(3) relating to main or core turbines or generators installed at power stations involved in the generation of electricity for the State's power system; and
 - Schedule 1, clause 2, that exclude maintenance or repair work by a self-employed person or their employee where their principal business is not in building and construction.
-

Recommendation 24 – Government review the exemption for civil works associated with mining that relate to:

- pipeline infrastructure used in the production and processing and the repair of such infrastructure;
 - sealed haul roads and tracks; and
 - maintenance of airstrips and landing pads.
-

The Review was tasked with examining exemptions under the Act. Exemptions potentially exclude building and construction activity that would ordinarily be levied. Levy payments could contribute to funding workforce training and so support the industries encompassed by the exemptions, especially where there is significant workforce movement.

In considering the matter of exemptions, the Review asked: if the construction work was undertaken by the same trades or skilled workforce, to deliver the same output as would ordinarily be captured by the levy, is there sufficient justification for an exemption?

In addition to feedback to the Issues Paper, the reviewers considered the legislative history of the current exemptions. They note that in most cases the arguments in support of the exemptions were offered in a significantly different context; for example, local councils were more likely to employ a workforce to undertake their capital works and the state's electricity system was the responsibility of a single state-wide provider. The Review notes that similar exemptions in other jurisdictions have been examined and in one example wound back (discussed under the mining and petroleum exemption, below).

The key exemptions raised in the Issues Paper and examined in this Review were:⁴⁶

- building and construction associated with generation, supply or transmission of electricity for the state's power system
- maintenance and repair work by employees of government and non-government businesses not principally involved in the building and construction industry
- building and construction associated with mining and petroleum, excluding direct exploration and extraction and not included in the current definitions of residential and commercial building and construction.

There are two matters to consider in relation to exemptions. The first relates to levy payment, and the second relates to the ability of workers within an exempt sector to have access to the training subsidised by the CITB. The latter is a policy decision of the CITB that will be influenced by the Objects to be set out in the Act.

a. Generation, supply or transmission of electricity

The Issues Paper proposed that if an item's cost would ordinarily be captured by the Act, the fact that it was associated with generation, supply or transmission of electricity should not exclude that item from calculation of the levy (for example, while some components are currently excluded, under the proposal all construction work associated with the installation of wind turbines or solar panels would be leviable activity).

CITF Regulation 13(3) states:

Pursuant to section 37(2)(g) of the Act, main or core turbines or generators to be installed at power stations involved in the generation of electricity for the State's power system constitute a class of items the cost of which will not be taken into account for the purposes of the calculation or imposition of the levy under the Act.

The Issues Paper noted that changes in electricity generation and in South Australia's electricity market have made this exemption difficult to apply and its policy rationale is unclear. The exemption appears relevant if a project involves the installation of components used in renewable electricity generation and the project owner objects to paying the costs of the components on the basis that they meet the description of a turbine or generator.

The Review is informed and CITB levy records confirm that while building and construction for renewable energy is leviable, the Regulation is ambiguous in its application to new types of electricity generation, notably solar, SMART grids and components used for its generation, which may or may not be categorised as turbines or generators. Some objection is also raised in relation to wind-generated power sites. The Review has identified no policy rationale that supports quarantining from the levy payment obligation components that would ordinarily be picked up under the list of leviable inputs in Schedule 1.

Further complications arise because the exemption is limited to electricity generation infrastructure that is connected to the South Australian electricity network (i.e., involved in the generation of electricity for the State's power system). It is the case now that much renewable energy generation infrastructure is limited to local networks that do not feed into the larger State network (although they may eliminate some of the draw on the State network). In view of the Act's objects, this is an arbitrary distinction as the skills and materials involved in the installation of this infrastructure are the same whether or not the power production feeds into a larger network.

⁴⁶ These are not the only exemptions under the Act. The other exemptions are: building and construction on agricultural land by the owner of the land (or another person for no remuneration), building and construction, repair, demolition etc of fences on agricultural land; and work directly associated with the care, conservation or rehabilitation of agricultural land. Other building and construction, notably by or on behalf of the Commonwealth Government, is for legal reasons outside the scope of the CITF Act.

The current environment of energy generation has dramatically changed since the Act's introduction and the distinction in the Act that power is or is not generated for the State's power grid or system is no longer applicable in an era of privately owned networks distributed over multiple landholdings, such as personal solar arrays, SMART grids and virtual power plants. South Australia's leading role in the implementation of these technologies only serves to underline this point.

The reviewers understand there are many transferrable skills across traditional building and construction (particularly electrical skills) and the renewable power generation industry. This means workers in this growing industry could access training that sustains the future renewable energy workforce if this work was leviable and captured in full.⁴⁷

To remove arbitrary distinctions and treatment of project owners in electricity generation projects, depending on whether the works are connected to the State network, it is recommended that the industry be consulted on removing the exemption in Regulation 13(3) relating to main or core turbines or generators installed at power stations involved in the generation of electricity for the State's power system, so these projects are consistently leviable, as are other building and construction projects.

b. Maintenance or repair work carried out by a self-employed person or an employee for the benefit of his or her employer, where the principal business activity of the self-employed person or employee is not in the building and construction industry

The Second Reading Speech for the Act contains a premise for this exemption:

It is intended [...] that repair and maintenance work which is minor in nature and which is carried out by an employee whose employer is not primarily engaged in building or construction work will not attract the levy.

Parliament's debate on this exemption focussed to a large extent on a desire to protect farmers, owner/builders and others, mainly owner/operator or small businesses, that operate outside the traditional building and construction industry. However, there was recognition that non-remunerated or volunteer workers engaged in building and construction needed essential skills to do that work safely and to acceptable standards.

Agricultural land has its own exemption – section 23(4) – which owner-builders can access. This Review proposes no change to this exemption.

The threshold of \$40,000 also excludes minor works (and if the threshold is lifted to over \$100,000 this would further expand the capture of minor works).

Removing the employer exemption would therefore only address the issue of large employers such as local government agencies being exempt because they use their own workforce and do not operate in the building and construction sector (as it is generally characterised).⁴⁸ This results in a reduction in the levy collection base, with this workforce excluded from accessing training and skills funded by the levy due to the Board's policy.

In 2000,⁴⁹ Parliament passed an amendment to the Act that removed a broad exemption on all government works on the basis that most of the work was outsourced. The rationale for maintaining an exemption for the benefit of councils or others which maintain in-house workforces to perform maintenance and repair work is not clear, when training and skill development is needed regardless of the employer.

⁴⁷ The Department for Energy and Mining was made aware of the opportunity to provide a submission on the exemption however none was provided.

⁴⁸ For large local councils, this excludes the cost of significant maintenance and repair works including on roadworks, footpaths, and playgrounds (what constitutes maintenance and repair and replacement works is also problematic and is interpreted on a case-by-case basis).

⁴⁹ *Construction Industry Training Fund (Miscellaneous) Amendment Act 2000 (SA)*.

Based on the threshold test - if the work requires the same skills and trained workforce, and the output is the same, then it is not justifiable that this exemption continue if the only discernible difference is the identity of the employer.

The majority of those responding to the proposition in the Issues Paper supported a change. Others cautioned against it without further investigation and consideration. Most opposition to the proposal was on the basis that maintenance and repair work was not “building and construction”. The Review notes, however, that the Act’s definition of building and construction contains many references to repair, renovation and alteration; it is not inconsistent to apply these definitions to employers outside the building and construction industry that employ their own workforces. In addition, the reviewers heard that if the threshold is lifted, this should preclude minor repairs and maintenance work.

c. Mining and petroleum civil construction works

Regulation 15 of the Regulations excludes work associated with any operation under the *Petroleum and Geothermal Energy Act 2000 (SA)*, the *Petroleum (Submerged Lands) Act 1982 (SA)*, the *Mining Act 1971 (SA)* and the *Opal Mining Act 1995 (SA)* (henceforth referred to as the mining Acts).

Currently, mining companies pay the levy in relation to building and construction that would normally be captured under the housing sector or commercial sector definitions. As a result, the exemption is directed at civil construction in the mining and petroleum sector.

Mining sector proponents argued for the exemption during debate on the original Bill,⁵⁰ on the basis that:

- they already spend a large proportion of budget on structured training
- the industry has high capital costs, which made the imposition of the levy on capital cost unfair compared to other industries.

The Review is not advocating that all construction activity covered by the mining Acts should be leviable,⁵¹ but that civil works exemptions be narrowed to exclude:

- pipeline infrastructure used in production and processing, and the repair of such infrastructure
- sealed haul roads and tracks
- maintenance of airstrips and landing pads.

These construction activities would be leviable works in any other industry but are currently exempt if they are captured by operations carried on in pursuance of any of the Acts that govern mining. This change would be consistent with the current arrangements in place in Western Australia (WA) (see case study below).

The reviewers’ recommendation addresses the concern that the current exemption is too broad and therefore creates inequity between industries. For example, a food manufacturing facility that undertakes work on a private sealed road to support transport to and from its production base to public roads would be leviable activity. It would be drawing on the civil construction workforce that was available to all industries. Sealed roadwork would be leviable if it were done by any other industry except mining.

50 It was also argued at the time that that larger employers in the industry may be required to pay the CITF levy in addition to the Australian Government Training Guarantee Levy, however this argument no longer stands as this was abolished in 1996.

51 No change to the exemptions that relate to the following non-core or non-operational work are proposed:

- work associated with the exploration for resources
- works resulting in unsealed haul roads and tracks
- works for supply or disposal of non-potable water
- works for the storage of tailings, overburden or waste
- works for excavation or backfilling of soil or overburden
- works for environmental remediation, restoration or rehabilitation
- maintenance and repair works
- lower value works to alter or renovate or replace facilities that have been decommissioned.

The continuation of the mining exemption has material impact on total levy revenue and, as the Board has previously noted, has inequitable results for levy payers.⁵²

Timing of commencement of work [on the Roxby Downs mine expansion] will determine the net impact. CITB activity will be affected in the area of infrastructure (roads, rail, airport, ports and a desalination plant). The core element of overburden removal is not subject to the CITF levy but it will cause a massive draw on the civil sector workforce and the availability of plant and equipment. CITB will not be funding training for workers performing this work because mining does not contribute to the CITF levy.

Respondents from those currently captured by the CITB generally supported the removal of exemptions in this area.

This sector greatly profits from the excellent work of the CITB in providing funding for both entry level and upskilling training and should contribute the same as other sectors. – Master Plumbers Association of South Australia

The logic of excluding work that would otherwise meet the definition of “building and construction work” merely because it is associated with mining and exploration work is unclear. – Small Business Commissioner

There are a significant number of apprentices who benefit from CITB funding, paid for by the building and construction industry, who forge a career in mining and resources. The civil construction industry crosses over into the mining sector and the government and CITB should investigate whether the resources sector should be included under the legislation. – Master Builders Association of South Australia

The resources sector benefits from the pool of trades trained predominantly within the construction sector, so it seems appropriate that they should contribute to a training levy. – Master Electricians Industry Association (South Australia)

However, mining industry respondents opposed any changes to these exemptions and echoed their original argument.

AMEC does not support the proposed reduction of the minerals sector’s CITF exemption, to increase revenue levied from the resources sector, to cross-subsidise training in other unrelated industries.⁵³ ... It is appreciated that the Issues Paper does not propose removing the levy for core resource exploration work, or any works currently identified as exemptions under the WA model. However, the original framework should be maintained.

Across South Australia, and Australia more broadly, mineral explorers and miners invest heavily into education and training programs for workers in the sector. These programs seek to build the capacity and skillsets of local workforces and communities, and provide long-term career opportunities. The training and development budgets of these operations, from emerging explorers to producing miners, is substantial and should not be compared to budgets of the construction sector. While there are transferrable skills between workers, the specialised skillsets required by mineral exploration and mining workers mean the two workforces are not directly comparable.

The nature of mineral exploration and mining work means that much of the work is extremely remote, warranting higher than average remuneration. It also increases logistical and plant and equipment costs, to ensure safety is prioritised throughout the exploration to development lifecycle. The intricacies of this industry are unique, and the stringent regulations and expectations of the sector are second to none. This results in higher training, operating, and capital costs. To propose levying these factors, in a high-inflation environment, is subservient to Government’s agenda to increase mining, to meet decarbonisation targets.

52 CITB Annual Training Plan 2011-2012, p.6.

53 It should be noted the CITB Act and model does not support levy collection from any sector to cross subsidise training in an unrelated sector.

There is no clear justification to remove the exemption for the mining sector, and a lack of demonstrable quantifying data to support. The exemption should remain, for the mineral exploration and mining sector, its associated works and maintenance activities. –Association of Mining Exploration Companies

Civil infrastructure projects related to mining and exploration projects do not, and are not appropriate, fit within the definition of Construction for the purpose of the CITF Act... With civil infrastructure activity related to mining and petroleum activities proposed to be captured in the scope of leviable activity, there is some concern the return in benefits to building workforce capability for these sectors will be diluted. Given the remote locations and related higher costs of projects overall... there needs to be careful consideration given to whether the capability building activity supported by the levy for these operations would add any benefit to the workforce challenges they experience...The resources sector already makes significantly contributions through royalty payments to the South Australian State government in accordance with the provisions of the Mining Act 1971 and Mining Regulations Act 2020. Royalties vary from 3.5% of the value of minerals to 52 cents per tonne depending on mineral type and totalled \$323m in 2020-21. The industry also contributed \$5.5bn in exports in the same period. It would seem counter-productive to economic growth to the State to impose an additional levy that will impact on the viability of the development of projects across regional and remote areas of the State and without a demonstrable assurance on the return on investment to the resources sector. RESA recommends the mining, exploration and petroleum industry representatives need to be directly consulted in relation to the implications of the changes in the scope of leviable activity particularly related to their operations along with the industry associations, particularly Association of Mining and Exploration (AMEC) and SACOME...It is the view of RESA that the South Australian mining industry will reflect those captured in the issues paper in WA.- Views expressed that under the Western Australian levy scheme, companies in the sector, which already spend a large proportion of budget on structured training, were unfairly impacted. – Resources and Engineering Skills Alliance (RESA)

The Review accepts that there may be nuances that distinguish the mining industry and warrant exemptions. For this reason, the Review supports the suggestions by respondents that further investigation and consultation with the mining industry determine the full impact of change. This would align with the WA Government's approach, which consulted with key stakeholders before a winding back of the equivalent broad exemption in that State. The reviewers support this approach and recommend engagement with this industry to determine:

- appropriate boundaries for levy imposition
- the impact of any exemption changes
- any necessary governance changes.

Consultation should include what CITB governance changes might be required if this exemption be lifted.

Case study – Changes to the WA exemption on mining industry work

A 2014 statutory review of the WA legislation that provided exemptions for mining sector employers concluded:

The current exemption of the levy applying to civil engineering construction projects in the resources sector represents an anomaly and [it] appears inequitable that this sector does not contribute to the levy whilst other sectors do, particularly as the resources industry recruits a significant number of workers trained and skilled at the expense of the Construction Industry.⁵⁴

The WA Government subsequently announced it would reintroduce the levy on mining industry construction projects. It conducted consultation and negotiations with the sector and key government and other industry stakeholders over several months.

The regulations commenced in October 2018. Subsequent changes were made to the legislation, including:

- expanding the board from seven to nine members, with the addition of members with construction experience or expertise in the mining and petroleum industries
- extending the number of groups the Minister would consult for appointments to the board to include relevant peak associations representing minerals and energy, mining and exploration, and petroleum production and exploration.

The resulting provisions continue to exclude some types of works in the resource industry, which can be described as non-core or non-operational work:

- work associated with the exploration for resources
- works resulting in unsealed haul roads and tracks
- works for supply or disposal of non-potable water
- works for the storage of tailings, overburden or waste
- works for excavation or backfilling of soil or overburden
- works for environmental remediation, restoration or rehabilitation
- maintenance and repair works
- lower-value works to alter or renovate or replace facilities that have been decommissioned.

The Review proposes that the South Australian regulations retain the WA exclusions.

⁵⁴ Review of the Operation and Effectiveness of the Building and Construction Industry Training Fund and Levy Collection Act 1990. Chaired by Robert Stratton, June 2014.

PART 4:

Allocation of funds and the training plan

The CITB's application of funds to training represents the largest non-government contribution to training for *any* industry in South Australia. It is critical that funds are expended in an evidence-based way to discharge the functions of the CITB and through an effective and efficient mechanism.

Allocation

Recommendation 25 – The Act be changed to make it clear that the Fund can be applied to attraction and retention activities.

Recommendation 26 – The hypothecation requirement be removed.

Scope

The Board's allocation of funds is guided by, and subject to the parameters of, the functions of the Board as outlined in section 11 of the Act:

- to coordinate training and personnel development within the building and construction industry
- to promote increased productivity, career opportunities, personal satisfaction and occupational health and safety within the building and construction industry through training
- to review and evaluate employment related training programs to ensure that they meet the training and skill requirements of the industry and to support appropriate training programs in the industry
- to ensure a more equitable distribution of effort amongst employers in relation to employment related training.

Accordingly, the Board funds suites of programs, each of which has a particular focus and objective.

The CITB undertakes a number of steps when planning how the fund is to be distributed across its programs and in what proportions.

1. The CITB conducts an internal review of past program performance (across Doorways2Construction, apprentice support and short courses) and uptake of training across existing employees, new employees and pre-apprenticeship (which is enabled by training recipients being registered with the CITB and able to be tracked across training activities).
2. The CITB supplements this information with consultation with the Department for Education to identify areas of overlap.
3. In relation to short courses, the CITB will consider the number of claimants and track this against the level of background building and construction activity. Each course is examined individually, and undersubscribed or oversubscribed courses are identified.
4. The CITB seeks validation of course currency with industry associations. It also consults with its sector committees and RTOs via a distributed survey (members of the sector committees are self-nominated and nominees are approved by the Board). Each sector committee includes at least one union and one industry practitioner.
5. The CITB conducts an internal review of each program and compares its findings with the Board's strategy (for example, to ensure alignment with programs' focuses on mature age workers, Indigenous employees etc).
6. A budget is calculated for each program; these are provided to the CITB's Finance, Risk and Audit Committee and then for Board endorsement. The proposed budget is compared with previous budgets and any decision to draw on the Reserve fund is made.

Large changes to program funding allocations are rare and the CITB provides the Board with modelling to determine funding allocations.

CITB decisions are guided by a Quality Assurance framework that allows CITB staff to apply quality benchmarking to decisions to approve or reject RTO and GTOs as eligible to receive CITB funding. Decisions around funding of RTOs and GTOs are reported to the Board.

Allocation trends

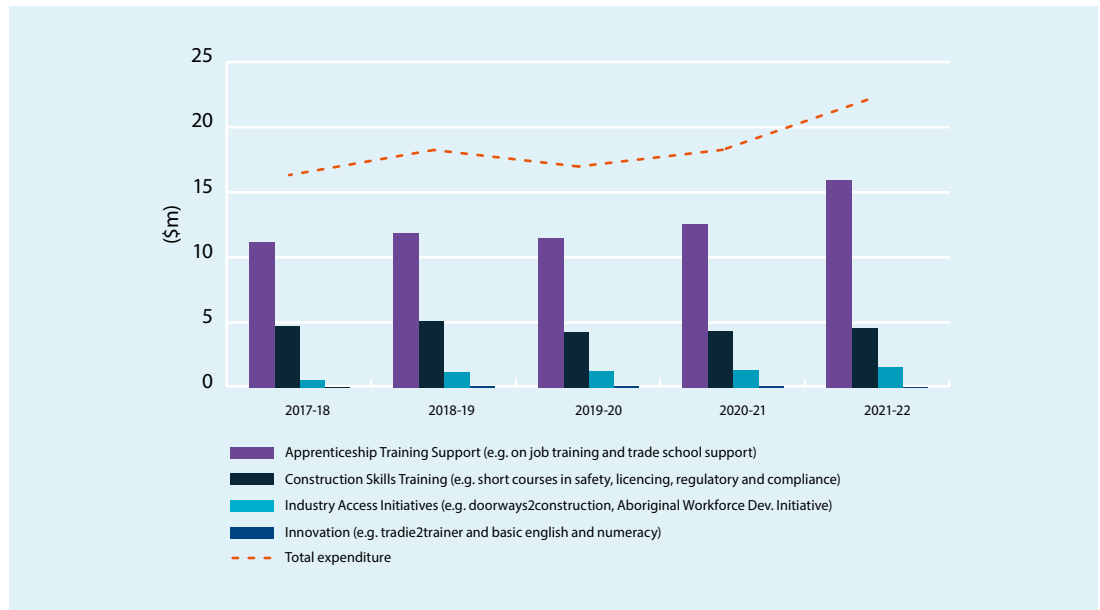
Since the establishment of the Fund, CITB investment has tended towards:⁵⁵

- employer and GTO payments via apprenticeship support (about 70% of overall allocations)
- employee payments via short course support (approximately 20-25%)
- program payments in student, equity, innovation and education programs (5-10%).

These ratios have remained reasonably consistent since the Act's commencement, with any adjustments made according to shifting government priorities, market demand, building and construction activity, and program re-organisation.

55 CITB total administration costs (including service of finance, administration, facilities and IT) are around 8-11% of total levy revenue.

Chart 4: CITB training expenditure by program, 2017-22



Source: CITB

Apprenticeship training support⁵⁶

This funding is predominantly in the form of a payment to an employer of an apprentice (under a direct indenture arrangement) or GTO⁵⁷ under two streams:

- tuition support – the CITB pays a portion of the trade school tuition costs (with the employer/ apprentice paying the balance) delivered by CITB-approved RTOs. Payment is made to the employer who then pays the trade school
- on-job support – the employer receives support funding to cover the costs of training the apprentice at the workplace.

Since 2018-19 this funding stream has been supplemented with incentive payments for mature aged apprentices and for school students who convert part-time apprenticeships into full-time, post-school apprenticeships. To be eligible for this funding, employers must validate that on-job training has occurred.

In 2021-22 expenditure in this category amounted to approximately \$15.2 million.

Short course funding for construction skills

The CITB allocated \$4.6 million in 2021-22 to the short-course funding stream to support 12,442 training participants. Most training is taken up by current construction workers with around 10% taken up by apprentices. This funding is available to workers at all stages of their career to improve and update skills through CITB-endorsed⁵⁸ vocational, supervisory and technical training; and for obtaining compulsory licences, such as White Card and meeting new regulatory requirements. Subsidised accredited and non-accredited⁵⁹ training is available for around 200 courses delivered by CITB-approved RTOs (see Appendix 4).

⁵⁶ Actual expenditure on these programs can fluctuate based on the level of industry demand. For example, while \$14.7 million was allocated to apprenticeship support for 2019-20, only \$11.5 million of this was spent on training.

⁵⁷ Payments to GTOs represent about 30% of all payments under the CITB's apprenticeship training support stream.

⁵⁸ In 2018-19 the CITB implemented a Quality Assurance Framework for endorsing accredited and non-accredited courses.

⁵⁹ Funding for accredited training is around 58% of all funding in this stream.

Industry access initiatives

Investment in equity initiatives, which promote participation in the industry by underrepresented groups such as Indigenous South Australians and women, totals about \$1.2 million a year.⁶⁰ Funding towards Indigenous students and trainees is paid to the employer to provide additional support. In addition to employer funding, the CITB funds a specialised mentoring program for Indigenous apprentices and their employers (GTOs are required to pass 100% to the host employer). No funding was allocated to promote female participation in the CITB's 2022-23 Annual Training Plan.

Funding provided to students is in the form of financial incentives to school-based apprentices for expenses associated with working in the industry, such as for driving lessons and work equipment.

doorways2construction™

The doorways2construction program supports school students undertaking studies in SACE pathways that lead to employment in the building and construction industry, predominantly through schools partnering with RTOs. This funding, around \$1.7 million annually, is provided directly to schools participating in the program.

Innovation programs

The CITB provides about \$100,000 a year⁶¹ for innovation, research, and education and awareness to ensure the industry is informed of leading-edge developments in technology and processes, and to improve the image of the industry to the public.

Recent allocation shifts

From late 2018 to early 2019 the South Australian Government sought to ensure additional apprenticeship support, in line with its commitment to create an additional 80,000 apprenticeships over five years across a range of priority occupations in the building and construction industry. At the time these included plasterers, carpenters and joiners, and bricklayers and stonemasons. While some CITB funding activities dovetailed with the government's objectives, there was also an expectation of an increase in the CITB's funding for apprentices to ensure the goal could be met. This resulted in a draw in the funds available to the other programs at that time.

To meet the additional capacity provided to apprenticeship funding, changes were made to the CITB's other programs, including:

- cessation of White Card course funding (with the exception of school-based programs)
- cessation of funding for mental health programs
- reduction in short course subsidies for non-priority courses.

This occurred as leading indicators showed a slowdown in construction activity. The Board anticipated drawing on cash reserves to ensure continuity of training funding to employers of apprentices.⁶² It is understood that during this period there were also decisions taken to reduce CITB operational expertise in data and research capabilities and compliance activities.

60 The South Australian Government contributed \$89,000 to the Doorways2Construction program in 2022, down from \$310,000 in 2021.

61 Around \$1.17 million from the Fund is consumed by administration costs.

62 CITB Annual Report, 2018-19, p.1.

Proposed changes

Innovation programs serve to increase attraction to the workforce, especially among difficult to reach groups, including women and Indigenous South Australians. The reviewers note that the funding emphasis these initiatives receive is partly a reflection of the language in the Act, including about the application of the Fund, which refers to people “in the industry” and “within the industry”. They note from examination of previous reviews⁶³ that there has been tension about the extent to which the Board should apply funds to those already in the industry (“upskilling”) rather than attraction initiatives.

All stakeholders supported the proposition that the Fund should address skills shortages, upskilling and entry-level training as supported by data and evidence available to the Board.

However, respondents differed in where they thought the funding emphasis should lie: social inclusion (TAFE SA); work, health and safety (CFMEU and CEPU); addressing skills shortages, encouraging people to enter the industry and upskilling existing workers (MBA); and upskilling for new technologies (MEA).

There was also advocacy for funding the skills development of professionals involved in delivering building and construction projects, such as landscaping, surveying, planners and project managers, and engineers; and the opportunities for supporting those sectors for workers in the building and construction industry:

Landscape Construction is an ideal industry to provide alternative opportunities to Civil workers. Further, given the similarities between both sectors, specific training focuses that leverage the overlapping skills and knowledge utilised in both sectors could be a highly efficient use of the CITF. – Master Landscapers of South Australia

While there was no opposition to the continuation of funding of apprenticeships, the Small Business Commissioner noted in her submission that the high proportion of funding directed through the Apprenticeship Support Program did not assist small non-employing businesses:

These small business operators also require ongoing training and education to succeed in their businesses, however, it is not clear that their interests are being represented on the Board. In its 2022-23 training plan, the Board projected its levy revenue to be \$26.5m. The lion's share of those funds (\$16.6m) was to be delivered across the Board's Apprenticeship Support Program, which does not seek to assist small non-employing businesses. – Small Business Commissioner

The reviewers understand this arises from underlying policy design that determines that funded training is directed to an employer for the benefit of their employee/s. As mentioned, this is attributable to the language of the Act and to the Board's long-term funding priorities, which favour those already in the workforce.

63 For example, the report of the Parliamentary Economic and Finance Committee notes: “[A] divergence of opinion was heard vis-a-vis competition for the training dollar. Some witnesses were adamant more funds should be directed towards entry level training whilst others acknowledged that training across the whole spectrum of the industry was equally important and that judgements and disagreements would inevitably occur.” (p.18). The KPA Review noted: “There was an overall acceptance by all stakeholders of the need for the two principal policy platforms adopted by the Board: one directed to entry level training and the other to the existing workforce. Significant differences of opinion were, however, apparent from the consultations about the relative importance of each and the appropriate levels of funding which should be applied to each.” (p.46).

The reviewers suggest this issue is exacerbated by policy decisions of the state and federal governments such as Fee-Free VET; that if the CITB was able to rely on data to be more responsive to changes in the training landscape, this might better achieve the objects of ensuring an appropriately trained and sufficient construction workforce.⁶⁴ As the building and construction industry is only one of many industries facing skills shortages, this data would also help the CITB understand the drain on the building and construction workforce from competing industries.

Hypothecation

The Act specifies that each industry sector – residential (or housing), commercial (or non-residential) and civil – should receive funding in roughly the same proportion that it contributes to the Fund.⁶⁵

A CITB analysis of funding proportionality throughout sector allocations from 1993 to 2018 considered the average percentage point difference between the sector share of levy collection and training expenditure (funding allocations) at five-year intervals. The analysis demonstrated that it could be challenging to achieve equity in fund distribution in a particular year if there was a sudden spike or dip in levy revenue. However, it highlighted that when viewed over five-year intervals from the fund's inception, the Board had achieved proportionality in the distribution to the sectors, within a -2% to +3% divergence.

The reviewers suggest that the issue with this approach is that it commands backward-looking analysis rather than considering projected skills demand, and in fact can bear an inverse relationship to where future demand might lay. It also does not account for the issue that when a particular sector is in high demand, employees may not be supported to leave their sites to attend training. This approach may also prejudice the ability of the CITB to respond to future technology and operating and delivery models such as modular and offsite construction approaches.

Hypothecation of funds is unique to the South Australian model. Previous reviews of the Act revealed a divided range of views on the rationale for, and efficacy of the hypothecation funding model:

- some stakeholders considered it to be the most equitable approach
- some stakeholders considered the model was not strategic and unnecessarily constrained the focus and effectiveness of the scheme
- sectors that existed outside the residential, non-residential/commercial and civil sectors preferred the establishment of a funding stream for cross-sector services.

The sector proportional allocation model was evaluated by the 2004 KPA Review, which found similarly divergent views on this issue. The KPA Review concluded that:⁶⁶

64 The CITB maintains a number of officer-to-officer linkages with the Department for Education / (Traineeship and Apprenticeship Services (TAS)) that build on important data sharing protocols and coordination of investment in training for the building and construction industry. CITB investment is supplemented by:

- State Government investment (currently \$1.28 million) in industry-based provider programs that support outreach, mentoring and connections between learners and trade pathways
- supports such as the South Australian Group Training Program (SAGTP) which aim to maintain or increase the completion rates of apprentices and trainees.

Other connections between the CITB and the Department are facilitated by:

- An MOU around apprenticeship and traineeship (TALAS) data sharing
- Periodic collaborations on working groups and research projects
- Department input into the CITB training plan
- Department advice on potential changes to the CITF Act and Regulations

65 CITF Act, section 32(3).

66 KPA Review Report, p.28.

The review accepts that there are indeed differences between the sectors which comprise the industry and that these differences need to be recognised and accommodated rather than resisted and discounted. Nonetheless, the review is unable to see how either the absence of clear data about the movement of the workforce or the differences between the sectors supports an inevitable outcome whereby it is enshrined within legislation that the funding is allocated to sectors in approximate proportion to their source of collection. The sectoral differences can be recognised in the organisational arrangements for the provision of advice to the Board, and specifically by the formation of three distinct industry advisory committees for this purpose. ... In fact, the exercise goes to show that the industry is capable of coming to the appropriate result in terms of the distribution of training support between the sectors (i.e. with the split representing the level of activity and therefore the need to provide skills for the respective sectors) without the prescription. The review considers that it is consistent with the reported maturing of the arrangements under the Act, and the associated renewed emphasis on a strategic role for the Board, that the legislative sectoral allocation formulation be removed. Accordingly, the requirement in section 32 of the Act that the training plan must be prepared on the basis that money from the Fund for the provision of training must be proportionately allocated to each sector should also be dropped. ...It will enable the Board to respond more unambiguously on behalf of the industry as a whole, a particularly important consideration in the event of the likely future down-turn in building activity and, therefore, levy revenue.

This Review echoes the observation in the KPA Review that, overall, the Act had a “unifying influence” on what was regarded as a “diverse” and highly segmented industry. Therefore, elements of the Act that tend to reinforce sectoral interests over those of the industry as a whole should be challenged, and if not shown to deliver a benefit that outweighs their opportunity cost, reconsidered.

The reviewers note that the industry proponents whose projects contribute most to the Fund view the proportional allocation mechanism as an important guarantee of transparency and accountability in how the Fund is disbursed across the three sectors. The reviewers suggest that it could be responded that the proportional allocation mechanism reinforces funding envelopes for the sectors, irrespective of their need for expansion of training, or external factors such as recession, or supply constraints or changes to government policy such as skilled migration or further education. The reviewers suggest the mechanism may limit the Board’s capacity to apply the Fund for strategic outcomes that benefit the industry as a whole.

There are other checks and balances available to the Board to ensure the Fund is appropriately distributed among industry sectors including:

- consultation with sector committees that inform it about current, imminent and longer-term challenges for skills development. The reviewers recommend that this intelligence gathering could be strengthened by formalising the requirement to consult with sector committees during the preparation of the training plan
- the Contingency Fund, introduced in 2004, which allows the Board to meet unexpected surges in training demand and consider contractions in building and construction activity that impact a sector’s revenue
- the roll-out of the CITB card holder scheme, which tracks registered workers through different employers and provides insight into the flow of workers between the sectors. This supplements the CITB’s access to the Department for Education’s Training and Apprenticeship Services (TAS) database which provides details for all construction apprentices
- the Board’s nearly 30 years’ experience in and accumulated data for refining its methodology for the allocation of funds, and industry feedback on the long-term efficacy of its approach.

The reviewers suggest the advantages that would flow to the CITB, the administration of the Fund, and industry through the removal, or part removal, of the proportional allocation mechanism include:

- the Board having more flexibility to tailor allocation of funds according to broader and more flexible criteria, including regional and demographic factors and changes to government policy regarding funding for training
- the Board being able to direct funding to fill gaps in the training market due to technology changes (for example, steel frame technology and Building Information Modelling (BIM))
- using funding to counteract inequalities across the sectors in different jurisdictions' recognition of qualifications (e.g., some civil sector qualifications are not recognised by the ABS, which restricts their access to government-funded training), the size of the unskilled workforce, and gaps in necessary skills, such as language and literacy.

The reviewers tested the concept that 60% of the fund be held back from hypothecation to enable whole-of-industry investment and greater Board flexibility. Two-third of respondents supported this approach.

In principle support. [...] The Property Council would advise that it would be prudent to regularly test whether the 60/40 allocation is yielding the intended results. – Property Council of Australia (South Australian Division)

This appears to be a better compromise, allowing new cross-sector initiatives to be identified and funded. – Adelaide Training and Employment Centre

The CITB, whilst in agreement with the current hypothecation approach, added:

The Board does not support a numerical percentage on spending application – CITB

The benefit to long-term planning for, and growth of, the industry was noted by one respondent:

The MLSA advocates for the allocation of funds based on need, evaluated via an objective measure such as skill shortage. Limiting the allocation of funds based on the proportion of contribution limits the CITBs ability to have a meaningful impact on 'smaller' or niche industries. Further, investment in these industries up-front, rather than only when they are contributing' will allow for the growth of contribution in the long-term. More robust planning, as per proposition 29, would better inform allocation of funds and potentially require more flexibility than is currently allowable. Further, we believe that holistic cross-sector programs should remain to be prioritised. The mobility of workers between sectors should also be considered, along with emerging building technologies as opportunities for cross-sector development/ widely applicable skills. – Master Landscapers of South Australia

One respondent advocated for the removal in toto of the hypothecation of sector funds:

We support the entire removal of proportionate funding requirements. We believe that these requirements serve little public or industry purpose, and incentivise ineffective spending. – CFMEU & CEPU (South Australia)

Respondents who opposed the proposition argued that removing or diluting the proportional sector model would risk diminution of funding for those sectors that contribute the most to it.

This would be to the detriment of the civil industry who is just now making inroads into formal training opportunities and workforce skilling. CITB Board needs to work harder at identifying 'new' sectors such as civil to ensure adequate support and funding. The CITB fund allocations to training activity should be allocated: 1. to each sector in approx. the same proportion as has been contributed to the Fund by that sector, and 2. to achieve objects of the Act. – Civil Contractors Federation (South Australia)

While the reviewers recommend the removal of the hypothecation model, it is recognised that this mechanism does provide some protected investment into the civil sector not currently available through other training funding sources. There was a general acceptance among respondents that the civil sector was not afforded the same levels of support that the residential and commercial sectors receive through national apprenticeship incentive programs, due to occupational classification structures.

These matters are managed by the federal government and are beyond the reach of this Review. Nevertheless, the reviewers acknowledge that the civil sector does not have the same traditional training pathways that the Board regularly supports through funding allocation. They note the importance of the Board maintaining a civil sector focus through its advisory committee and that the Board may wish to consider an internal allocation policy that addresses this issue.

Training plan

Recommendation 27 – The annual planning cycle dictated by the Act should be replaced by three-year rolling reviews of the overall strategic direction developed through the CITB’s investment decisions, and include the ability to trigger annual adjustments and reallocation of funds.

The Act states that the purpose of the training plan is to improve the quality of training, “increase the levels of skills, in the building and construction industry across all skill areas of that industry”; and to set out priorities for “employment related training to be funded from the Fund”.⁶⁷

The Board is required to provide its training plan to the Minister by 31 May each year.⁶⁸ The training plan is based on the Board’s assessment of the state of the building and construction industry at a point in time. The reviewers heard that while the 12-month cycle was important to the Board being able to pivot and respond to emerging priorities, the reporting cycle and limited horizon planning created limitations and that longer-term planning that enabled annual changes would be preferred.

The Review specifically sought feedback on the proposition that the annual planning cycle be replaced by four-year rolling reviews of the overall strategic direction developed through the CITB’s investment decisions, with capacity for annual adjustments and reallocation of funds.

Respondents to this proposition consistently supported this approach. However, a small number of respondents⁶⁹ suggested a three-rather than a four-year rolling plan.

67 CITF Act, sections 32(1)-(2).

68 There may arise instances when the Minister requests changes to the training plan about which the Board may wish to seek clarity or engage in further dialogue. This may involve a protracted process for which the Board and the Minister’s office should plan for. These priorities coincide with end of financial year reconciliation processes, such that changing the date by which the training plan is to be prepared could be advantageous from an administrative point of view.

69 The Master Plumbers Association, National Electrical and Communications Association, and Refrigeration & The National Fire Industry Association (NFIA) supported three-year training plans.

*While this provision [for annual Training plans] has the benefit of requiring the Board to reassess priorities at least every 12 months, the 2022-23 Annual Training Plan does not evidence the Board's plan to address long term workforce planning or long-term skills and workforce requirements. [...] Given the persistence of the skills and workforce shortages in the building and construction industry, I support the proposition that the annual planning cycle should be replaced by four-year rolling reviews of the overall strategic direction developed through the CITB's investment decisions, with capacity for annual adjustments and reallocation of funds. – **Small Business Commissioner***

*This proposition represents a more robust planning strategy than the current 12-month format and would address the issues regarding the current planning strategies' misalignment with the needs of larger, years-long projects. The MLSA believes that a four-year rolling review would allow for both short and long-term training considerations based on industry needs and market intel (data). This approach will assist industry to improve workforce shortages in the short term and skill upgrading in the long term. – **Master Landscapers of South Australia***

*An annual training plan is very short. It [is] operational for 6 months before planning commences for the next FY. Most of the apprenticeship contracts in construction industry are 4 years. Schools[] programs are planned and delivered by calendar year and the ATP year impacts the ability to secure program funding for schools for a full year. I strongly agree with a 4 year plan with reviews each year. – **Representative of an industry association***

Some stakeholders argued that training plan updates should not continue to be subject to Ministerial approval, but rather be able to be approved by the Board. This is a question of balancing transparency and parliamentary accountability related to the Board's capacity to rapidly adjust to industry needs. The reviewers were not persuaded that the approval process for updates should be removed from the Minister.



PART 5:

Further matters

Future reviews of the CITF Act

Recommendation 28 – The Act be reviewed at least every five years. The Minister should be required to table a report of the review within the customary number of sitting days. The review should not be statutorily required to be completed within six months.

It is important that legislation be regularly reviewed to ensure its currency and fitness for purpose.

Previous reviews of the Act have incorporated a requirement for a subsequent review three years from the implementation of any changes. The reviewers recommend that to allow any changes to the Act as a result of this Review to be fully implemented and absorbed, a review occur no later than five years from the date of implementation of any such changes. Further, such a review should not be time-constrained but allowed sufficient time based on the extent of any changes made. The Act should provide that the final report must be tabled in Parliament within the customary number of days.

CITB – Board and organisation name

Recommendation 29 – The Act be amended to separately identify the Board and the administration of the organisation.

The CITB is unique in that it is known by an acronym that references the Board and its organisation. Currently there is nothing in reference to the name that distinguishes the Board from the administering CITB staff or organisation. The reviewers heard that this is confusing for everyone involved, and recommend that the administrative part of the organisation – the staff – be recognised in the Act as an entity with a different name to the Board that governs it. Construction Industry Training SA or similar might be considered appropriate. The use of “Board” should be reserved for the Board of that entity.

Employment of department staff

Recommendation 30 – In relation to the use of public service employees, the Act should reflect the *South Australian Skills Act 2008 (SA)* to enable more integrated and complementary connections between the Board and government.

The Act specifically excludes public service employees from becoming staff of the CITB. While this arrangement reinforces the Board's independence from government, it may also restrict the Board's access to department staff who possess valuable knowledge of the CITB's operating environment and the interconnections between the CITB and government investment planning processes.

The reviewers suggest adopting a more flexible approach that reflects the *South Australian Skills Act 2008 (SA)* position on assigning public service employees:

24 – Use of staff etc of Public Service

The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

The reviewers suggest that a similar arrangement should be available to the CITB, to allow it access to public sector employees and promote more integrated and complementary connections between the Board and government.

This proposition was supported by most stakeholders, with some opposing. The reviewers consider that the main reservations about this proposal, which relate to a potential or perceived dilution of the Board's independence, could be adequately addressed through prudential management of staff members' interaction with the Board and adherence to the public sector value framework that binds all State Government employees.

Debt recovery

Recommendation 31 – When the Act is amended consideration should be given to enhancing the Board's debt recovery powers.

The Act provides in relation to recovery of unpaid levy:

29–Recovery of levy etc

The Board may recover in any court of competent jurisdiction –

- a. amounts of the levy that are due for payment; and
- b. other amounts due to the Board under this Part.

The Board can impose a fine for non- or late payment of the levy, any failure to notify the Board of a variation of the project value by \$50,000 from the estimated value, and related infringements. These are discretionary powers that may be applied, depending on the severity of the offence, any attempts by the offender to mitigate the breach, and a project owner's responsiveness to CITB action to recover an unpaid levy. Some of these powers exceed those available to other statutory bodies, but the definition of "project owner" and how the levy is calculated could make it more difficult for the CITB to secure payment.

The efficacy of the Board's debt recovery powers may be enhanced by deeming relevant key offences as strict liability offences (for example, as occurs under the ACT's equivalent legislation⁷⁰). Strict liability overcomes the problem of a defendant claiming they had no knowledge of the relevant law, which the reviewers understand is often offered as the reason for non-compliance.

The Board's debt recovery powers might also be enhanced by clarifying in the Act that the Board can seek recovery of a debt from any person who is liable to pay the levy. This would address the recurring problem of multiple "project owners" claiming (as the Review was informed) that, in their view, another person (usually but not always a subcontractor) was responsible for payment.⁷¹

Other models

The Terms of Reference required the Review to consider other models that support the industry outcomes the CITB was established to achieve. This is a very wide-ranging issue which encompasses different models for raising revenue through an efficient mechanism and the distribution of those funds towards outcomes that benefit the industry as a whole.

The CITF is a model unique to the building and construction sector and is the largest source of non-government training funding for any industry. Similar CITB schemes operate in Western Australia, Tasmania, the ACT and Queensland.⁷²

Each of the models the Review considered had benefits and disadvantages, with design and effectiveness varying according to factors not always linked to the core business of the responsible agency.

There is no other comparable industry model in South Australia. However, considering the value placed by the sector on the Fund, the reviewers suggest other models could be explored if the levy collection methodology was transferable.

Lessons from other models are drawn on throughout the report. For example, the Review has recommended that the changes to mining industry exemptions in Western Australia be considered for adoption in South Australia.

The reviewers strongly recommend investigation of an alternative model of collection for the levy. It notes that in Queensland the levy is collected on behalf of the CITB equivalent as part of the portable long service leave collection process. This should be a focus of exploration for any future review of collection methods.

In South Australia the collection of the construction industry's portable long service leave levy is wages-based, and this, or a similar reportable process, such as BAS statements, is also suggested as a basis for investigation as an alternative to project value as the basis of the levy.

The reviewers note that Tasmania is implementing a system that improves the integrity of data collection and reconciliation, called SOFIA. This is a labour market analysis tool able to synthesise data from the Australian Bureau of Statistics, the Tasmanian Government, industry associations and businesses. These sources provide information about projects in the pipeline, labour market forecasts in key trades and across sectors and regions, and the likelihood of peaks and troughs in the local labour market. The reviewers believe this warrants exploration when fully implemented.

70 See *Building and Construction Industry Training Levy Act 1999* (ACT), section 20(3).

71 This approach is demonstrated under section 85(3) of the *Landscape South Australia Act 2019* (SA).

72 Victoria, Northern Territory and New South Wales do not have legislated whole of industry training levies.



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APPENDIX 1:

List of stakeholders (direct engagement)

Organisation	Representative
ACT Training Fund	Glenn Carter, Chief Executive
CITB Executive	Holly Willcox, Chief Executive Belinda Shipway, Director, Levies and Finance
CITB Member	Andrew Clarke, Chief Executive, Master Plumbers Association of South Australia
CITB Member	Maree Wauchope, Chief Executive, Barunga West Council
CITB Member	Pat Gerace, Chief Executive Officer, Urban Development Institute of Australia (South Australia)
CITB Member	Patrick Curran, Curran Risk Management
CITB Member	Rebecca Pickering, Chief Executive, Civil Contractors Federation (South Australia)
CITB Member	Stephen Knight, Executive Director, Housing Industry Association (South Australia)
CITB Member	Will Frogley, Chief Executive, Master Builders Association of South Australia
CITB Presiding Member	John Chapman
Construction Industry Training Board	CITB Board Members together
CSQ (Construction Skills Queensland)	Geoff Clare, Chief Financial and Operations Officer
Department for Trade and Investment, Planning and Land Use Services	Troy Fountain, Manager, Commission Assessment Cassia Byrne, PlanSA Lead Nardia Symonds, Service Support Manager
Department for Education, Skills SA	Bec Curtain, Director, Policy and Strategy
Department of Mining and Energy	Rob Faunt, Technical Regulator Rohan Cobcroft, Director, Geological Survey of SA
Department of Treasury and Finance	Jane Burton, Director, Account Management, Budget and Performance Branch Rachel Williams, Manager, Budget Analysis and Performance Branch

Organisation	Representative
Deputy Leader of the Opposition Shadow Minister for Education, Training and Skills	Hon John Gardner MP
Eichler Earthmovers	Kerry Yeates, Business Manager
Former CITB researcher	Eric Parnis
TAFE SA Board Member	Michael Boyce, Former Training and Skills Commissioner Chair, former GTO CEO & RTO CEO
Keystone Tasmania	Dr Karin Mathison, Chief Executive
Master Builders Association of South Australia	Estha van der Linden, Director, Policy and Communications Vanessa Powell, GTO and Apprenticeship Manager
Minister for Education, Training and Skills	Hon Blair Boyer MP
Public Works Committee	Melissa Campaniello, Parliamentary Officer
QLeave	Dianne Ridgway, Supervisor Levies Compliance
SA Skills Commissioner	Renee Hindmarsh
SA Small Business Commissioner	Nerissa Kilvert, Small Business Commissioner Stephanie Burke, Manager Policy and Advocacy Helen Lines, Senior Policy and Advocacy Officer
SA Unions, CEPU, CFMEU	Dale Beasley, Secretary SA Unions Peter Russell, Senior Industrial and Legal Officer & CITB Board Member John Adley, SA Branch Secretary CEPU Marcus Pare, Assistant State Secretary CFMEU
WA Construction Training Fund	Tiffany Allen, Chief Executive Kylie Armstrong, Director, Communications and Operations Ngaio Kerr, Strategic Operations Manager' Dennis Tng, Levy Operations Manager

APPENDIX 2:

List of submissions

Written submissions

Submission No.	Respondent
1	Property Council of Australia (South Australia Division)
2	National Fire Industry Association
3	National Electrical and Communications Association SA/NT Branch
4	Refrigeration & Air Conditioning Contractors Association SA
5	Specialist Contractors SA
6	Gay Thompson (former CITB Presiding Member)
7	TAFE SA
8	Housing Industry Association (South Australia) Ltd
9	Civil Contractors Federation (South Australia)
10	Australian Institute of Architects (South Australian Chapter)
11	Construction Industry Training Board
12	McKell Institute
13	Association of Mining and Exploration Companies
14	CFMEU SA and CEPU SA (joint submission)
15	Peter Russell (current CITB Member)
16	Urban Development Institute of Australia (South Australia)
17	Master Plumbers Association of South Australia
18	Office of the South Australian Small Business Commissioner
19	Master Builders Association of South Australia Inc
20	Davison Earthmovers

Propositions survey

Submission No.	Respondent
1	Australian Workers Union
2	Construction Industry Training Board
3	Group Training Employment
4	Hills and City Construction
5	Office of the Industry Advocate
6	Adelaide Training & Employment Centre
7	Master Landscapers of South Australia
8	Master Electricians Industry Association (South Australia)

Short survey

Respondents	Sector represented
7 (41.2%)	Construction – commercial
4 (23.5%)	Other
3 (17.6%)	Construction – civil
2 (11.8%)	Education and training
1 (5.9%)	Construction – residential
Total 17	

APPENDIX 3:

Legislative history

The Originating Act

The Bill for the first *Construction Industry Training Fund Act 1993 (SA)* was introduced to the South Australian Parliament in November 1992.

The Second Reading Speech records:

The levy, and its associated fund have been proposed by the employers and unions in the building and construction industry, with the aim of improving the level of skills of new and existing employees in the industry, with a resultant increase in productive efficiency within the industry.

...

It is critical for members to note that the drive for the establishment of the levy and associated fund has come from employer and union bodies within the industry. This is not a government-driven initiative. This is a case where the industry has recognized a problem and taken steps to rectify it. The government is consequently responding to a direct approach from the industry for assistance.

Consultation

The Construction Industry Training Council, which this Bill seeks to replace with a new Construction Industry Training Board, has coordinated an extensive consultation with industry members on the proposal. These have included all unions, employer organizations, peak industry bodies, government and statutory authorities with a direct involvement or association with the industry.

It is particularly encouraging that such a large and diverse industry sector has been able to come together to address this important issue, not only for the future benefit of the industry, but the State as a whole.

As the initiative for the levy has come from industry itself, it has been important that the industry partners were directly involved in the drafting of the legislation, to ensure that the individual and broad concerns of industry members are addressed.⁷³

A Construction Industry Training Council incorporated under the *Associations Incorporation Act 1985 (SA)* was converted by the Act.⁷⁴

The original Act introduced a levy of 0.25% (which was not to exceed 0.5%) on all building and construction work valued over \$5,000; the original Act also exempted building and construction by a government authority (unless tendered out through a public tendering process). The levy was to be paid by the project owner, considered at that time to be the holder of a Builder's Licence or the principal contractor. It was anticipated that although the principal contractor would pay the levy in the first instance, the cost could be passed down to sub-contractors.

Due to the overlap of levies created by the CITF Act and the Commonwealth Training Guarantee (a 1990 initiative that required all employers above the payroll threshold to spend a minimum percentage of payroll in each financial year on eligible training, discontinued in 1996) the South Australian Government proposed to exempt private sector building and construction from the Training Guarantee.

It was expected that the levy would raise \$6.5 million in its opening year of operation.

73 Hansard, The Hon SM Lenehan, Minister of Education, Employment and Training, House of Assembly 10 November 1992, p 1284.

74 Ibid. p. 1284.

The original Bill excluded from the levy minor repair and maintenance work carried out by the employee of an employer not primarily engaged in building and construction.

The intention of the original Bill was to allow payment of the levy to any agent, such as an Industry Indemnity Scheme or a bank, which could be appointed by the Board. Receipt of payment of the levy would constitute proof of payment for the purpose of building approval by a local council.

The original CITB structure consisted of:

- five employer representatives
- three union representatives
- two ministerial nominees with appropriate experience in VET (including previous or current provision of VET)
- an independent presiding officer.

The Act also required at least three standing committees to be formed to advise the Board on training matters and the allocation of funds relevant to each industry sector; and allowed the creation of working parties to address cross-sector issues. Board decisions required to the support of a majority of the Board only if that majority comprised a majority of the members respectively, of the employer and employee-nominated representative members, and at least one of the Minister's appointed members.

The Act required the development of an annual training plan, setting out the Board's priorities, to cover "the full range of occupations in the industry", for the benefit of entry-level employees and existing employees through upskilling.

The Act also implemented the sector funding allocation model, requiring the allocation of funds by the Board to the sectors in approximately the same proportion as those sectors' contributions.

The Act was assented to on 8 April 1993 and applied to building and construction work within scope of the Act commencing after 1 September 1993.

First review and amendment of the Act

The Act was first independently reviewed in 1997 by Coopers and Lybrand consultants. The report of the review was presented to the South Australian Parliament in March 1998 and the Government subsequently released the review for public consultation.

In October 1998, the government agreed in principle to continuing the training levy and requested further work to address the issues identified in the Coopers and Lybrand review. The additional work, undertaken by a government working party, involved a further round of stakeholder consultations and was concluded in September 1999.

The working party found strong industry support to continue the training fund and recommended:

- the levy threshold be raised from \$5,000 to \$15,000
- the levy rate of 0.25% be maintained
- businesses undertaking training of their own workforce be exempted from paying the levy
- there be no action taken in response to the introduction of the GST
- the Act be amended to clarify the definition of "project owner" and to exclude from the levy plant and equipment that does not form an integral part of the building or construction work (while retaining some leviable work connected to the installation of such plant and equipment).

2000 amendments to the Act

The government adopted these recommendations through passage of the *Construction Industry Training Fund (Miscellaneous) Amendment Act 2000 (SA)*, noting that other recommendations, including excluding training practitioners from appointment to the Board and exempting local government from payment of the training levy, were not adopted.

The *Construction Industry Training Fund (Miscellaneous) Amendment Act 2000 (SA)* commenced on 31 March 2001 (for administrative reasons, certain amendments came into effect on 1 July 2001) and introduced key reforms to raise the project cost threshold for payment of levy from \$5,000 to \$15,000; and further, to:

- remove the exemption from paying the levy that applied to a government agency. This was based on the observation that the majority of State and Local Government building and construction was contracted out, making the exemption irrelevant; and the fact that government building and construction employees benefited from funded training.
- change the wording in Clause 1 of Schedule 1 of the Act to make the list of leviable building and construction work non-exhaustive⁷⁵ and to make clear that plant and equipment that constituted an integral part of the building and construction work should be leviable
- add the words “including professional fees” in Schedule 1A in the list of matters to be taken into account when calculating the value of work
- refine the Board appointment process, to allow the Minister to appoint a member usually nominated by the prescribed employer or employee associations in the absence of a nomination from the employer or employee associations following a defined period of time.

Further review and amendments

The next full independent review of the Act was completed in 2004. This was triggered by section 38 of the Act, which mandated a review as soon as practicable after 1 January 2003, such review to consider:

1. the effectiveness of the Board
2. the attainment of the objects of the Act
3. the need for the Act to continue in operation
4. any other matters the Minister considered to be relevant.

The review was conducted by KPA Consulting and its key recommendations were:

- to maintain a project-value based legislated training levy
- to remove the requirement for allocation of funds to industry sectors in approximate proportion to those sectors’ contribution to the fund
- to maintain the project value price inclusive of GST
- to maintain the levy value payment threshold at \$15,000
- that the Board develop a communication strategy
- that the Board’s role as principal training advisor to the South Australian Government continue but that the Board’s role as principal training advisor to the Commonwealth Minister be discontinued
- that the Board have regard to equity and diversity in exercising its functions
- that the Board consider the potential for a broader and more innovative use of the fund, including leveraging industry contributions
- that the Board implement its preferred arrangements for performance measurement
- to avoid the perception of a conflict of interests, the phrase “represent the interests of” be removed from the Act in relation to the employer and employee association nominated members
- that the Board continue to comprise 11 members including a chair, the independent member and a representative of government with experience in workforce and skill development nominated by the Minister, three representatives of employee groups and five representatives of employer groups

⁷⁵ The 2nd Reading Speech tabled by Hon MK Brindal, Minister for Employment and Training, states “[t]he list of items in clause 1 of schedule 1 will no longer be exhaustive”.

- the removal of the “veto” provision in the Act, whereby a resolution of the board, to be carried, must be supported by a majority of the representatives of both the employer and employee sub-divisions of the Board
- that Board members be remunerated as a level 4 board member under the guidelines
- that the three sector committees be retained and their advisory role revitalised through stronger linkage between committees and the board.

The South Australian Parliamentary Economic and Finance Committee conducted a contemporaneous review of the CITF Act and a Report was tabled in the House of Assembly in November 2005. Its key recommendations were:

- that the Board develop a widespread communication strategy to clearly explain the rationale for its training agenda and funding allocations
- that the Minister consider jointly investigating with key stakeholders the potential for a more strategic approach to addressing skills shortages by linking all stakeholders and industry training and promotional activities via private/public urban regeneration projects
- a key stakeholder forum occur to reach consensus on how best to maximise outcomes from the levy and to ascertain the best approach to ensuring more apprentices come through the system
- that the Board amend its policies to ensure market conditions allow the majority of the Fund’s training expenditure (including reserves when spent) be directed to:
 - entry level training through Group Apprenticeship Schemes or Group Pre-vocational Schemes and individually indentured apprentices, and
 - workers who have left the industry and who wish to re-enter at a later date
- that the objects of the Act be amended to indicate the Board’s primary role is to provide training in the areas of skills shortage in the industry
- that the Board develop a policy in relation to traineeships and the role traineeships may play in the training of new entrants in the industry
- that the scope of what can be funded under the Act be amended to include employees and contractors in the installation of kitchen, bathroom and furnishing industries
- that the Board look at finding more flexible ways and responsive training packages in the industry
- that the Act be amended to require the Board to submit its training plan to the Parliamentary Economic and Finance Committee each year and report annually to that Committee on the results achieved compared to the plan approved
- that the Minister commission regular reviews of the Construction Industry Training Fund and the training it provides, and regular quantitative and qualitative analysis of the training be provided as a result of such reviews.

In September 2008 the *Construction Industry Training Fund Regulations 2008* were amended to clarify that, for building and construction not under a contract, GST was to be taken into account in the calculation of the components that made up the estimated value of building and construction work. These Regulations also revoked the *Construction Industry Training Fund Regulations 1993*.

In July 2014 the South Australian Government commenced a review of the then 428 operational statutory boards and committees, including the Construction Industry Training Board, to identify opportunities to reduce red tape and improve accountability and governance. The report of this review concluded, in relation to the CITB, that further investigation occur into the CITB, with consultation and legal advice to be sought before any legislative change. To facilitate this the department and the CITB commenced a review under the guidance of a bipartite steering committee, with departmental and CITB representatives. This subsidiary review made the following recommendations:

- that the levy project value threshold be increased from \$15,000 to \$40,000 via amendment of the *Construction Industry Training Fund Regulations 2018*
- the department and CITB jointly develop a Memorandum of Understanding and accompanying action plan
- that the CITB provide a report to the Minister on the implementation of the recommendations arising from the 2004 KPA independent review.

The recommendation to increase the project value threshold of the *Construction Industry Training Fund (Exemptions) Variation Regulations 2017* was implemented from 1 July 2017 via the passage of the *Construction Industry Training Fund (Exemptions) Variation Regulations 2017*.

2019 amendments

The next major set of reforms to the Act occurred in 2019 as a result of the passage of the *Construction Industry Training Fund (Board) Amendment Act 2019 (SA)* (with consequential amendments to the *Construction Industry Training Fund (Board) Variation Regulations 2019*).⁷⁶ The drivers for these reforms as explained by the then Government were to:

- streamline and modernise the Board appointment process by enabling Board members to be appointed on the basis of merit and experience in the industry and thereby move the appointment process closer to interstate legislative models
- improve the Board's autonomous and strategic decision-making processes by removing the veto voting provisions to allow the Board to make more strategic decisions based on a collective industry consensus outside of sectional interests⁷⁷ (this was also a recommendation - Recommendation 20 - of the 2004 independent KPA Consulting review of the CITF Act).

The reforms replaced the previous Board appointment process that required the appointment of

- five people selected by consensus by the employer associations listed in a Schedule to the Act
- three people selected by consensus by the employee associations listed in a Schedule to the Act
- two people nominated by the Minister with appropriate experience in VET and the provision of VET training; and
- a presiding member nominated by the Minister after consultation with the employer and employee associations listed in the relevant Schedules to the Act.

In place of this the amended Act permits the Minister to appoint:

- at least four people with industry knowledge, experience or expertise, one of whom to represent the interests of employers and another the interests of employees
- an additional two members, who are independent of the building and construction industry.

Before appointment of the above, the Minister must consult with the presiding member.

⁷⁶ These amendments took effect from 20 June 2019.

⁷⁷ Hansard, The Hon DG Pisoni, Second Reading Speech, House of Assembly, 24 October 2018.

The following additional amendments were made:

- removal of the requirement that to be carried, a resolution of the Board must be supported by a majority of employer-nominated members and a majority of the employee-nominated members
- removal of the requirement that when considering any resolution to change the levy rate, at least one employer and one employee representative must be present at the meeting
- removal of the requirement that the Presiding Member must consult with the listed employer and employee associations in the appointment of the Presiding Member
- amending the Act to allow the Presiding Member to make a deliberative and casting vote
- nominations for membership of the Board be provided through a public expression of interest process
- enabling a deputy member to act as a member of the Board upon a member's position being vacant for the balance of the term of appointment or until a person is appointed to the vacant office. This was designed to reduce red tape and ensure adequate Board representation while member positions were filled.
- authorising the Minister to request the Board to provide a report relating to any matter relevant to the operation of the Board and the Act, within a specified time
- a review of the amendments to occur following the third anniversary of the amendments.

2020 Regulations amendments

In 2020, department officers engaged the CITB and external stakeholders to identify potential amendments to the CITF regulations. This resulted in new regulations that, in addition to revoking the previous regulations, increased from \$25,000 to \$50,000 the amount requiring a project owner to notify the Board of a variation from the original project value notified, in turn requiring the project owner to pay the additional levy.

Board history and context

Before the 2019 amendments the Minister's imprimatur was limited to three of the Board's 11 appointees: the presiding member and two appointees with appropriate experience in VET (including in the delivery of VET). An overview of the historical differences and subsequent amendments of the Boards composition is found above.

Parliament acknowledged at the inception of the Act that its development and maturity into legislation was a direct result of the effective advocacy and cooperation of the employer and employee representative bodies at the time, and in this regard was a model to be emulated by other industries. The original Act also capitalised on the coordinating work of the established and supported Construction Industry Training Council (S.A.) by ensuring its continuation as the Board⁷⁸. In summary, as the Second Reading Speech to introduce the Bill illustrates, the Board was squarely characterised as industry conceived and driven, required to fund its own operation, and as setting a good example for other industries to follow. Hansard shows that the government was responding to a request from industry that had undertaken an extensive consultation process to formulate the arrangements underpinning the Act.

⁷⁸ Before its declaration in 1993 under the CITF Act, the Board's predecessor was the Construction Industry Training Council.

The Board before the 2019 amendments

Before the *Construction Industry Training Fund (Board) Amendment Act 2019* (SA), the Board consisted of:

- a presiding member, nominated by the Minister, after consultation with the employer and employee associations referred to in schedules to the Act
- two people nominated by the Minister with experience in the provision of VET and who had been engaged in the provision of VET
- five people nominated by employer associations to represent the interests of employers
- three people nominated by employee associations to represent the interests of employees

This structure was proposed by industry (employer bodies and unions) as the most efficient and workable of options considered at the time of the introduction of the Act.

Committees

From the outset, the Board was supported by three standing committees, “to give advice to the Board on training matters and allocation of funds relevant to each particular sector of the industry”.⁷⁹ Historically, these sector committees have comprised representatives from industry, employer and employee associations. The employer and employee associations responsible for nominating members to the Board were listed in a Schedule to the Act (consequentially removed under the 2019 amendments). The Board in its original composition therefore reflected and amplified the representativeness of its membership as reflected in its advisory committees and industry membership.

2019 amendments to the Act

The *Construction Industry Training Fund (Board) Amendment Bill 2018* (Amendment Bill) introduced the first wave of reforms to the Board appointment process and structure since its inception. The Second Reading speech to the Bill stated:

The Board appointment process under the current legislation is among the most prescriptive in the nation, and has not been amended since the Act’s inception. This is despite recommendations in a 2004 independent review to modernise the appointment process and voting provisions.

The changes will bring the Act into line with analogous legislation in other states and territories, and legislation governing the appointment of boards in the state’s education and training sector. The intention is to enable board members to be appointed based on their merit and experience in the sector.

...

All appointments to the board will be made by the Governor on nomination of the responsible minister and will comprise persons who have the knowledge, skills and experience to enable the board to carry out its functions effectively. The presiding member will now be entitled to a vote, including a casting vote in board proceedings. The board will comprise up to eight industry representatives, who are nominated by the minister following a public expression of interest process, as well as two independent members.

The veto voting provisions will be removed to enable decisions of the board to reflect a majority position, not the majority position of a prescribed sectional interest as is currently the case.

The Construction Industry Training Fund (Board) Amendment Bill 2018 will result in a board that is better equipped to serve the industry’s workforce skills and development needs.⁸⁰

79 Hansard, The Hon SM Lenehan, Minister of Education, Employment and Training, House of Assembly 10 November 1992, p 1284.

80 The Hon. D.G. Pisoni, Second Reading Speech to the Construction Industry Training Fund (Board) Amendment Bill, House of Assembly, 24 October 2018.

During the debate on the amendment Bill some of the then Minister's assertions, notably in relation to the level of prescriptiveness of analogous legislation and the frequency of the use of the veto voting provisions, were challenged. However, in broad strokes, the amendments appeared to align the Act's provisions around Board appointments, composition and voting procedures with more contemporary legislation for the establishment of Boards connected to industry and VET⁸¹. The amendments also adopted more open-ended appointment mechanisms, notably, an expression of interest process, from analogous legislation (in this case the Tasmanian legislation⁸²).

The reviewers note that in relation to the rationale for the changes, concerns have been aired since the very earliest reviews of the Act about the potential for conflict of interest caused by the presence of representatives of organisations directly involved in the provision of funded training. However, subsequent reviews also noted the board working in a "cooperative and cohesive manner with a whole of industry perspective, not subject to being overridden by industrial and sectoral perspectives".⁸³ It is the role of the current review to consider these matters, among other things.

81 For example, the *TAFE SA Act 2012* (SA) mandates that its Board comprises "persons who together have, in the Governor's opinion, the expertise, abilities and experience required for the effective performance of TAFE SA's functions and the proper discharge of its business and management obligations (including in the areas of education and training, business, industry and community affairs and strategic planning)".

82 *Building and Construction Industry Training Fund Act 1990* (Tas), s.5(2): "Before appointing a member, the Minister is to give notice in at least 3 daily newspapers published and circulating in the State that persons interested in being members may provide written expressions of interest to the Minister within the period specified in the notice."

83 KPA Review, p.60.

APPENDIX 4:

Examples of CITB-subsidised courses

Building trades	<ul style="list-style-type: none"> • Carry out basic levelling • Timber roof trusses • Construction of buildings • Identify and produce estimate costs for building and construction projects
Certificate IV modules	<ul style="list-style-type: none"> • Manage small business finances • Apply building codes and standards to the construction process for Class 1 and 10 buildings • Apply legal requirements to building and construction projects • Design and size sanitary plumbing systems • Service Type A gas appliances • Lead effective workplace relationships • Resolve business disputes • Select, prepare and administer a construction contract
Civil/plant	<ul style="list-style-type: none"> • Install trench support • Conduct civil construction grader operations • Operate and maintain chainsaws (basic and advanced) • Read and interpret plans and job specifications • Excavator – duty of care • Site based risk control processes • Dump truck – new plant operator
Plumbing and water operations	<ul style="list-style-type: none"> • Lay pipes • Identify, locate and protect underground services • Commission and maintain backflow prevention devices • Operate and control wastewater processes • Disconnect and reconnect water heaters connected to low voltage installation wiring
Design and drafting	<ul style="list-style-type: none"> • Introduction to CAD • Building codes and standards - residential
Driving vehicles	<ul style="list-style-type: none"> • Drive heavy rigid vehicle • Drive medium rigid vehicle • Drive heavy combination vehicle

Electrical/refrigeration and renewable energy	<ul style="list-style-type: none"> • Open registration basic cabling licence • Instal and terminate coaxial cable • OH&S for electrical workers in conjunction with NBB 002 • Perform rescue from a live low voltage panel • Design grid-connected battery storage systems • Design grid-connected photo voltaic power supply systems
Management	<ul style="list-style-type: none"> • Managing WHS in the workplace • Managing small business finances • Produce labour and material schedules for ordering • Estimating costs for projects and understanding tender documents • Prepare specifications for all construction works • Resolve business disputes • Cultural awareness training
Legislation and codes	<ul style="list-style-type: none"> • Right of entry • Timber roof trusses • Understanding the timber framing code
High risk work	<ul style="list-style-type: none"> • Licence to perform dogging • Licence to perform rigging basic level • Licence to operate a forklift truck • Licence to operate a tower crane • Multipurpose tool carrier operation • Erect and dismantle restricted height scaffolding
Quality safety, health and environment	<ul style="list-style-type: none"> • Remove non-friable asbestos • Enter confined space (breathing apparatus) • Safety testing of electrical equipment and cord assemblies (test and tag) • Provide first aid • Enter confined space (refresher) • Works safely at heights • Perform tower rescue • Provide basic emergency life support • Lead an emergency control organisation • Manual handling • Bullying and harassment in the workplace • Gas test atmospheres • Works safely on roofs • Crystalline silica exposure prevention
Elevated work platforms	<ul style="list-style-type: none"> • Licence to operate a boom type elevating work platform (boom length 11 metres or more) • Elevated work platforms - duty of care scissor lift • Operation elevating work platform (boom type) • Work as a safety observer/spotter
Wet trades	<ul style="list-style-type: none"> • Apply set coats • Wall and floor tiling Level 2 • Waterproofing of domestic wet areas • Use bricklaying and block laying tools and equipment • Apply waterproofing process to internal wet areas





