

Building Research Levy Act 1969

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Contents

		Page
	Title	1
1	Short Title and commencement	2
2	Interpretation	2
3	Act to bind the Crown	4
	Building research levy	
4	Minister may prescribe rates of levy	4
5	Payment of levies by builders	5
6	Submissions to arbitration	6
7	Power to obtain information in order to assess amount of levy payable	7
8	Expenditure of levies	8
9	Power to appoint agents to collect levies	10
	Association membership	
10	Membership of the association	10
	Financial provisions	
11	Annual accounts, etc	11
12	Auditors and auditing of accounts	11
13	Copy of balance sheet to be sent to Minister and members	13
14	Copy of rules to be sent to Minister	14
15	Financial provisions to apply notwithstanding anything to the contrary in association's rules	14
	Miscellaneous provision	
16	Offences by officers of the association	14

An Act to authorise the levying of building contractors to provide money for research into improved techniques and materials for use in the building industry

Note

This Act is administered in the Department of Industrial and Scientific Research.

1 Short Title and commencement

- (1) This Act may be cited as the Building Research Levy Act 1969.
- (2) This Act shall come into force on the 1st day of January 1970.

2 Interpretation

In this Act, unless the context otherwise requires,—

Association means the Building Research Association of New Zealand (Incorporated), a society incorporated under the Incorporated Societies Act 1908; and, where appropriate, includes the board of the association

Builder, in relation to any construction work, means—

- (a) In any case where there is a main contract by an employer for the performance of the construction work, the person with whom the contract is made:
- (b) In any case where there is no such contract and the construction work is performed by any person for the purposes of sale or leasing on his own account, that person:
- (c) In all other cases, the person responsible for the carrying out of the construction work:

Builder: this definition was substituted, as from 9 October 1975, by section 2(1) Building Research Levy Amendment Act 1975 (1975 No 62).

Building consent means a building consent in terms of the Building Act 2004; but does not include a consent issued in respect of any demolition

Building consent: this definition was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Building consent: this definition was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Chief Executive means the chief executive of the Ministry of Research, Science, and Technology

Chief Executive: this definition was inserted, as from 2 August 1990, by section 14(1) Foundation for Research, Science, and Technology Act 1990 (1990 No 72).

Consideration, in relation to any contract, means the amount agreed between the employer and the builder at the time at which the contract is entered into as being the amount payable

to the contractor under the contract; but does not include any addition to or reduction in the amount so agreed which is subsequently agreed on as a result of any variation of the contract made after the levy payable in respect of the contract becomes due

Construction work or work means any work in connection with the construction, erection, renewal, alteration, or improvement of a building for which a building consent is required under the Building Act 2004

Construction work or work: this definition was substituted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Construction work or work: this definition was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Contract means a contract between an employer and a builder which is for the performance of construction work and which determines the amount of consideration payable to the builder in respect of the work

Director-General*[Repealed]*

Director-General: this definition was omitted, as from 2 August 1990, by section 14(1) Foundation for Research, Science, and Technology Act 1990 (1990 No 72).

[Repealed]

Employer means any owner or other person who contracts with a builder for the performance of construction work by the builder, or at whose request, or on whose behalf or on whose credit, with his privity or consent, construction work is performed; and includes all persons claiming under him whose rights are acquired after the commencement of the work

Financial year means the period of 12 months ending with the 31st day of March in any year

local authority means a territorial authority within the meaning of the Local Government Act 2002

Local authority: the original definition was amended, as from 9 October 1975, by section 2(2) Building Research Levy Amendment Act 1975 (1975 No 62), by omitting the words “and the Waiheke Road Board”.

Local authority: this definition was substituted, as from 1 April 1980, by section 8(3) Local Government Amendment Act 1979 (1979 No 59).

Local authority: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Minister means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Minister: this definition was substituted, as from 2 August 1990, by section 14(1) Foundation for Research, Science, and Technology Act 1990 (1990 No 72).

Owner means the person to whom the land in respect of which any construction work is to be, is being, or has been performed belongs; and includes a person having a leasehold or other limited estate or interest in the land

Prescribed, in relation to any levy imposed under this Act, means the rate of levy for the time being prescribed by the Minister by notice in the *Gazette*.

3 Act to bind the Crown

This Act shall bind the Crown.

Building research levy

4 Minister may prescribe rates of levy

- (1) Subject to the provisions of this Act, the Minister may from time to time, after consulting with the association and the New Zealand Master Builders' Federation Incorporated, prescribe by notice in the *Gazette* the rate of levy to be paid by builders for the purposes of this Act.
- (2) Subject to the provisions of this section, the rate so prescribed shall—
 - (a) In the case of construction work performed pursuant to a contract, be based on the total consideration payable under that contract; and
 - (b) In the case of construction work performed otherwise than pursuant to a contract, be based on the total value of the work as ascertained under section 5 of this Act.
- (3) The prescribed rate shall not exceed \$1 for every \$1,000 (or part thereof) of the total consideration payable under any con-

tract or the total value of construction work, as the case may be.

- (4) The rate of levy shall be notified in the *Gazette* at least 14 days before it is to come into force.
- (5) The Minister may at any time vary or revoke any notice made under subsection (1) of this section.

5 Payment of levies by builders

- (1) For the purposes of this Act, a levy, the rate of which is for the time being prescribed under section 4 of this Act, shall be payable by every builder—
 - (a) In respect of the consideration payable to him under any contract entered into by him for the performance of construction work; or
 - (b) In any case where he performs or intends to perform any such work otherwise than pursuant to a contract, in respect of the value of the work as ascertained under subsection (2) of this section.
- (2) Where the value of any construction work is required to be ascertained for the purposes of paragraph (b) of subsection (1) of this section, that value shall be ascertained as follows:
 - (a) The value (if any) specified in the building consent; or
 - (b) If no value is so specified, the value shall be such value as may be agreed upon between the association and the builder or, in default of such agreement, as may be determined by arbitration under section 6 of this Act.
- (3) Every such levy shall become due and payable by the builder at the time the building consent is issued.
- (4) Notwithstanding the provisions of subsection (1) of this section—
 - (a) Where a levy is assessable on the consideration payable under any contract, no levy shall be payable if the consideration is less than \$20,000;
 - (b) Where a levy is assessable on the value of construction work, no levy shall be payable if the value of that work is less than \$20,000.
- (5) If any builder contracts to perform construction work in stages, then, for the purpose of assessing what amount of

levy is payable in respect of the work, the considerations payable in respect of each stage shall be added together and the appropriate levy shall be calculated on the basis of the total sum so ascertained.

- (6) Where any levy is assessable on the consideration payable under a contract, the entitlement of the association to the levy shall not be defeated, reduced, or otherwise affected by any counterclaim, set-off, or cross demand by or on the part of the employer with whom the contract was made.
- (7) Where a levy is payable by a builder under this section, he may pay it directly to the association or to such agent as the association may have appointed to collect levies on its behalf.
- (8) All money payable by way of levy under this section shall be recoverable as a debt due to the association.

Subsection (4)(a) and (b) was amended, as from 1 April 1983, by section 2 Building Research Levy Amendment Act 1982). It was further amended, as from 1 April 1988, by section 8(2) Finance Act 1987 (1987 No 200) by substituting the expression “\$20,000” for the expression “\$3,000”.

Subsections (2)(a), (b) and (3) were substituted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

6 Submissions to arbitration

- (1) Where the value of any construction work is required under subsection (2) of section 5 of this Act to be determined by arbitration, the arbitration shall, subject to the provisions of this section, be conducted by an arbitrator appointed by the association and the builder, or, if the association and the builder cannot agree on the appointment of an arbitrator, each such party shall appoint an arbitrator, and the arbitrators so appointed shall appoint an umpire.
- (2) Where either party to the arbitration fails to appoint an arbitrator within 21 days after being requested to do so by the other party, the arbitrator appointed by the other party shall alone conduct the arbitration, and his decision shall be binding on both parties.
- (3) If the arbitrators fail to agree on the matter within 28 days of its having been referred to them, the matter shall be determined by the umpire to be appointed by the arbitrators, and the decision of the umpire shall be binding on the parties.

- (4) Each party to the arbitration shall pay the costs, charges, and expenses of the arbitrator appointed by him. The costs, charges, and expenses of the umpire (if any) shall be borne equally by the parties.
- (5) Every arbitration under this section shall be carried out in the manner prescribed by the Arbitration Act 1908; and the provisions of that Act shall, subject to the provisions of this section, extend and apply to any such arbitration and to the arbitrators and to the umpire (if any).

7 Power to obtain information in order to assess amount of levy payable

- (1) Where a levy is assessable on the consideration payable under any contract, the association may require the employer or the builder to provide such information relating to the consideration payable as may be necessary to enable the association to assess the amount of levy payable to it.
- (2) Where a levy is assessable on the total value of any construction work as specified in a building consent issued by a local authority, the association may require the builder or the local authority to provide such information relating to the value specified in the consent as may be necessary to enable the association to assess the amount of levy payable to it.
- (3) Subject to subsection (4) of this section, no person shall disclose otherwise than to the board of the association, or any officer or servant of the association, any information provided pursuant to subsection (1) or subsection (2) of this section—
 - (a) In the case of information provided under subsection (1) of this section, without the consent of the builder and employer to whose contract the information relates; or
 - (b) In the case of information provided under subsection (2) of this section, without the consent of the builder to whom the permit is issued and the local authority issuing the permit.
- (4) Subsection (3) of this section shall not apply—
 - (a) To the disclosure of information in the form of a summary of similar information provided by or obtained from a number of builders, local authorities, or employers, if the summary is so framed as not to enable particu-

- lars relating to any particular business to be ascertained from it; or
- (b) To any disclosure of information made for the purpose of any legal proceedings pursuant to this Act or any other Act, or for the purposes of any report of any such proceedings.
- (5) If any person wilfully fails to comply with any requirements made under subsection (1) or subsection (2) of this section, he commits an offence and is liable on summary conviction to a fine not exceeding \$200, or on a second or subsequent conviction \$400.
- (6) If any person—
- (a) Knowingly or recklessly provides, pursuant to any requirement made under subsection (1) or subsection (2) of this section, any information which is false in a material particular; or
- (b) Wilfully discloses any information in contravention of subsection (3) of this section—
- he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200 or to both.
- (7) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Subsection (2) was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by substituting the words “building consent” for the words “building permit”. It was further amended by the same provision by substituting the word “consent” for the word “permit”.

8 Expenditure of levies

- (1) The money received by the association from levies imposed under this Act or from any other source shall be used by the association for the purposes of promoting and conducting re-

search and other scientific work in connection with the building construction industry.

- (2) Without limiting the generality of subsection (1) of this section, the money collected by way of levy under this Act or from any other source may be used by the association for all or any of the following purposes:
- (a) The establishment and equipment of laboratories for the purpose of facilitating building research:
 - (b) The carrying out of tests and experiments on materials used in the building construction industry:
 - (c) The carrying out of experiments to discover improved techniques for use in the building construction industry:
 - (d) The establishment and maintenance of a library of books and other publications relating to building construction techniques and materials:
 - (e) The encouragement of the study of building research and related matters:
 - (f) The allocation of grants to any person, institution, or body conducting research into or in connection with techniques or materials (or both) used in the building construction industry in New Zealand:
 - (g) The holding of lectures, seminars, exhibitions, or public meetings for the purpose of disseminating information relating to developments in the field of building research:
 - (h) The publication from time to time of information relating to the activities of the association and developments in the field of building research:
 - (i) The provision of general advisory services to members relating to building construction techniques and materials:
 - (j) The acquisition of land and premises (whether by purchase, lease, or otherwise) for the purposes of the association:
 - (k) The erection of premises for the purposes of the association, and the maintenance, alteration, repair, decoration, or improvement of the association's premises:
 - (l) The acquisition of patents and licences relating to building construction techniques and materials:

- (m) The payment of honoraria to officers of the association, the payment of salaries, wages, and superannuation benefits to its servants, and the payment of travelling and accommodation expenses to any of them in connection with the carrying out of their duties:
- (n) The payment of expenses incurred in connection with—
 - (i) The day to day administration of the association:
 - (ii) Meetings of persons conducting the affairs of the association, or meetings of any committee appointed by the association.

9 Power to appoint agents to collect levies

- (1) Any person may, subject to his concurrence, be appointed by the association as an agent for the purpose of receiving any levies payable under this Act.
- (2) For the purpose of remunerating any agent appointed under subsection (1) of this section, the association may permit him to retain such percentage of every levy collected by him as may be agreed upon by him and the association and approved by the Minister. The percentage shall not in any case be more than 5 percent of the amount of levies collected.
- (3) For the purposes of this section, the term **person** includes a local authority.

Association membership

10 Membership of the association

- (1) Notwithstanding anything to the contrary in the rules of the association, but subject to the provisions of subsection (3) of this section, every person for the time being carrying on business as a builder who, being liable to pay a levy under this Act to the association, is not for the time being in arrears with the payment of the levy shall be entitled, by virtue of that fact and without payment of any membership or other fee,—
 - (a) In the case of any such person who is not already a member of the association, to become a member on his making written application to the association for the purpose; or

- (b) In the case of any such person already being a member of the association, to continue to be a member.
- (2) Nothing in this section shall preclude the association from admitting to membership in accordance with its rules any person other than one who is entitled to be a member of the association by virtue of subsection (1) of this section.
- (3) Every person who is a member of the association shall, subject to his fulfilling his obligations as a member, be entitled to all the benefits of membership of the association conferred on members by its rules, including the right to exercise a vote at any general meeting of the association.

Financial provisions

11 Annual accounts, etc

- (1) The association shall at all times ensure that full and correct records of all its financial transactions, assets, liabilities, and funds are kept.
- (2) The association shall appoint some fit person to act as its secretary and to keep all records and books of account.
- (3) At the end of each financial year, the association shall prepare an income and expenditure account showing its financial transactions for that year, together with a statement of financial position as at the last day of that year. Every such statement of financial position shall give a true and fair view of the state of affairs of the association as at the end of its financial year, and every such income and expenditure account shall give a true and fair view of the income and expenditure for that year.

The words "statement of financial position" were substituted, as from 1 October 1997, for the words "balance sheet" pursuant to section 6(1) Financial Reporting Amendment Act 1997 (1997 No 17).

12 Auditors and auditing of accounts

- (1) The association shall, at its annual general meeting, appoint a chartered accountant or chartered accountants (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996) to hold office until its

next annual general meeting as its auditor or auditors for the purpose of auditing its accounts:

Provided that no person who is an officer, member, or servant of the association shall be capable of being appointed as an auditor under this subsection.

- (2) In the event of there being a vacancy in the office of auditor due to death, resignation, removal from office for misconduct, or inability to act, the board of the association may appoint a person qualified to hold office as auditor under subsection (1) of this section to fill the vacancy until the next annual general meeting of the association. While any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.
- (3) The remuneration of any auditor appointed under subsection (1) of this section shall be fixed by the association at its annual general meeting. The remuneration of any auditor appointed under subsection (2) of this section shall be fixed by the board of the association.
- (4) As soon as practicable after the end of each financial year the board of the association shall cause the income and expenditure account and the statement of financial position for that year to be sent to the auditor or auditors who shall thereupon audit and report on those documents. The auditor or auditors shall, on completion of the audit, return the audited income and expenditure account and statement of financial position to the board, which shall then cause those documents and the report of the auditor or auditors to be submitted to the next annual general meeting of the association for the approval of the meeting.
- (5) All the provisions of section 166 of the Companies Act 1955 (which section relates to auditors' reports and auditors' rights of access to books of account and to attend and be heard at general meetings), so far as they are applicable and with the necessary modifications, shall apply to the association as if it were a company registered under the Companies Act 1955. For the purposes of this subsection the term **statement of financial performance** in the said section 166 shall be construed as meaning income and expenditure account.

- (6) Any unqualified person who acts as auditor of the association commits an offence and is liable on summary conviction to a fine not exceeding \$200.

Subsection (1) was amended, as from 1 October 1996, by section 23 Institute of Chartered Accountants of New Zealand Act 1996 (1996 No 39) by substituting the words “chartered accountant or chartered accountants (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996)” for the words “member of members of the New Zealand Society of Accountants”.

The words statement of financial position were substituted, as from 1 October 1997, for the words “balance sheet” pursuant to section 6(1) Financial Reporting Amendment Act 1997 (1997 No 17).

The words “statement of financial performance” were substituted, as from 1 October 1997, for the words “profit and loss account” pursuant to section 6(2) Financial Reporting Amendment Act 1997 (1997 No 17). (Also substituted for words “profit and loss Account”.)

13 Copy of balance sheet to be sent to Minister and members

- (1) The association shall within 3 months after the expiration of each financial year or within such extended period as the Minister may allow, provide the Minister and the chief executive with a report on its proceedings and activities during that financial year. There shall be annexed to the report copies of the income and expenditure account and balance sheet of the association together with a copy of the report of the auditor and auditors thereon.
- (2) The Minister shall lay before Parliament a copy of the report sent to him under subsection (1) of this section (together with a copy of the association’s income and expenditure account and balance sheet for the year to which the report relates) within 28 days after the date of his receiving the report if Parliament is then in session or, if Parliament is not in session, within 28 days after the date of the commencement of the next ensuing session.
- (3) Within 3 months after the expiration of its financial year, the association shall send to each of its members a copy of the report sent to the Minister under subsection (1) of this section, together with a copy of its income and expenditure account and balance sheet for that year and a copy of the report of the auditor or auditors in respect thereof.

- (4) Nothing in this section shall be construed so as to limit the application of the provisions of the Incorporated Societies Act 1908 to the association.

Subsection (1) was amended, as from 2 August 1990, by section 14(1) Foundation for Research, Science, and Technology Act 1990 (1990 No 72) by substituting the words “chief executive” for the word “Director-General”.

14 Copy of rules to be sent to Minister

If so required by the Minister, the association shall, within such reasonable time as the Minister may specify, send him a copy of its rules, together with any amendments to them. Any such copy shall be duly certified by the Registrar of Incorporated Societies as being the registered rules of the association.

15 Financial provisions to apply notwithstanding anything to the contrary in association’s rules

The provisions of sections 11 to 14 of this Act shall apply to the association notwithstanding anything to the contrary in its rules.

Miscellaneous provision

16 Offences by officers of the association

- (1) Every officer of the association commits an offence, and is liable on summary conviction to a fine not exceeding \$200, who—
- (a) Fails, without reasonable excuse, to take all reasonable steps to secure compliance by the association with any requirement imposed on it by this Act; or
 - (b) Wilfully does any act in contravention of the provisions of this Act, or, in any case where the association contravenes any such provision, connives at the contravention.
- (2) For the purposes of this section, the term **officer** means any member of the board of the association and any paid secretary thereof.