

Queensland



**BUILDING AND
CONSTRUCTION INDUSTRY
(PORTABLE LONG SERVICE
LEAVE) AMENDMENT ACT
1998**

Act No. 44 of 1998

Queensland



BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) AMENDMENT ACT 1998

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MINOR AND CONSEQUENTIAL AMENDMENTS

Queensland



**Building and Construction Industry (Portable
Long Service Leave) Amendment Act 1998**

Act No. 44 of 1998

**An Act to amend the *Building and Construction Industry (Portable
Long Service Leave) Act 1991***

[Assented to 27 November 1998]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Building and Construction Industry (Portable Long Service Leave) Amendment Act 1998*.

Commencement

2.(1) Sections 3, 4, 7 (except for inserted section 9(1)(a)) and 8 commence on the date of assent.

(2) The remaining provisions of this Act, including the Schedule, commence on 1 January 1999.

Act amended

3. This Act amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of title

4. Title, after ‘industry’—

insert—

‘, and to allocate funds for training in the building and construction industry’.

Amendment of s 3 (Definitions)

5.(1) Section 3, definitions “**employee**”, “**register of employees**” and “**registered employee**”—

omit.

(2) Section 3—

insert—

‘**“eligible worker”**’ see section 3A.

“employer” means a person who, by oral or written contract, engages an eligible worker to perform building and construction work.

“non-Queensland government entity” means—

- (a) a corporation incorporated under the Corporations Law all the stock or shares in the capital of which is or are beneficially owned by the Commonwealth or another State; or
- (b) an instrumentality, agency, authority or entity of the Commonwealth or another State; or
- (c) a department of government of the Commonwealth or another State;
- (d) an entity established under an Act of the Commonwealth or another State and declared under a regulation to be a non-Queensland government entity.

“register of workers” means the register of workers kept by the Authority under this Act.

“registered worker” means a worker whose name is in the register of workers.

“worker” means eligible worker.’.

(3) Section 3, definition **“government entity”**, paragraph (a)—

omit, insert—

- ‘(a) a corporation incorporated under the Corporations Law all the stock or shares in the capital of which is or are beneficially owned by the State; or’.

Insertion of new s 3A

6. After section 3—

insert—

‘Meaning of “eligible worker”

‘3A.(1) A person is an **“eligible worker”** if the person is an individual

who, for the majority of the person's ordinary hours of work, performs or usually performs building and construction work—

- (a) under a contract of employment for which a rate of pay is fixed by a building and construction industry award or agreement; or
- (b) under a subcontract to provide services of labour only that would, if performed under a contract of employment, be work for which a rate of pay is fixed by a building and construction industry award or agreement; or
- (c) under a contract of employment as a foreperson, subforeperson or like position directly supervising a person mentioned in paragraph (a) or (b).

'(2) However, a person is not an “**eligible worker**” if—

- (a) a regulation declares that the person is not an eligible worker; or
- (b) the person is engaged under a contract of employment with—
 - (i) a local government; or
 - (ii) a government entity; or
 - (iii) a non-Queensland government entity; or
- (c) the person is engaged in a managerial, clerical, professional or ancillary capacity.'.

Amendment of s 9 (Authority's functions)

7. Section 9(1)—

omit, insert—

'**9.(1)** The Authority's primary functions are—

- (a) to provide an equitable and efficient system of portable long service leave for eligible workers in the building and construction industry; and
- (b) to provide funds for training for persons in the building and construction industry.'.

Insertion of new s 33

8. After section 32—

insert—

‘Funds for training

‘**33.(1)** Funds of the Authority are also to be allocated for the training of persons in the building and construction industry.

‘**(2)** The amount to be allocated for training is an amount equivalent to 0.05% of the cost of building and construction work used to calculate the levy for each financial year, other than that part of the cost attributable to any exemptions from the levy approved under sections 71, 78 and 79.¹

‘**(3)** However, for working out the amount for the financial year ending 30 June 1999, the cost of work used to calculate the levy for the period 1 July 1998 to the commencement of this section is to be disregarded.

‘**(4)** The amount is to be paid by the Authority as a grant to a building and construction industry training fund to be held in trust for the training by an entity prescribed under a regulation.

‘**(5)** The amount is to be paid to the entity in accordance with a regulation.’.

Amendment of s 40 (Date of registration)

9. Section 40(4)—

omit, insert—

‘**(4)** The Authority must not, in any case, fix a date earlier than—

- (a) if the applicant is a person mentioned in section 3A(1)(a)²—1 July 1992; or
- (b) if the applicant is a person mentioned in section 3A(1)(b) or (c)—1 January 1999.’.

¹ Sections 71 (Exemption from payment of levy), 78 (Building and construction work for public authority) and 79 (Voluntary performance of building and construction work)

² Section 3A (Meaning of “eligible worker”)

Amendment of s 41 (Cancellation of registration)

10. Section 41—

insert—

‘**(3A)** Despite subsections (1), (2) and (3), subsection (3B) applies if payment for long service leave is made to a person because the person makes an application under section 56 for an entitlement to long service leave under section 57(1B).

‘**(3B)** The Authority must immediately—

- (a) cancel the registration of the person as a registered worker; and
- (b) notify the person of the cancellation; and
- (c) remove the person’s name from the register of workers.’.

Amendment of s 50 (Number of days’ service)

11.(1) Section 50, ‘employed under a contract of employment’—

omit, insert—

‘engaged’.

(2) Section 50(a) and (b), ‘employment’—

omit, insert—

‘engagement’.

(3) Section 50—

insert—

‘**(2)** Subsection (1) does not apply if the work is performed under a contract for services other than a contract for labour only.’.

Amendment of s 52 (Limitations on service credits)

12. Section 52(5) and (6)—

omit, insert—

‘(5) If payment for long service leave is made to a person because the person makes an application under section 56(1) or a corresponding law that corresponds to section 56(1), the person must not be credited in the register of workers with any day’s service for building and construction work performed by the person during the period of long service leave.

‘(6) If payment for long service leave is made to a person because the person permanently stops, or intends to permanently stop, work in the building and construction industry, the person must not be credited in the register of workers with any day’s service for building and construction work performed by the person during the year immediately after the day the person applies for payment.

‘(7) Subsection (6) does not apply if the payment is made under section 57(1B).’.

Amendment of s 56 (Application for entitlement to long service leave)

13. Section 56(1)—

omit, insert—

‘**56.(1)** A registered worker who has service credits in the register of workers may apply to the Authority in the approved form for long service leave.’.

Amendment of s 57 (Entitlement to long service leave)

14.(1) Section 57(1)(a) to (d)—

omit, insert—

- ‘(a) if the registered worker has accrued 10 years service in the register of workers—8.67 weeks; and
- (b) after 10 years service, leave accruing for each additional day’s service recorded in the register at the rate that 8.67 weeks bears to 10 years.’.

(2) Section 57—

insert—

‘(1A) Subsection (1B) applies if—

- (a) a registered worker has accrued at least 5 years but less than 10 years service; and
- (b) the worker has been credited with retrospective service credits under section 54; and
- (c) the worker—
 - (i) intends to permanently stop work in the building and construction industry; or
 - (ii) dies.

‘(1B) The entitlement to long service leave is a period that bears to 8.67 weeks the proportion that the worker’s service credits bear to 10 years service.’.

Amendment of s 59 (Amount of long service leave payment)

15.(1) Section 59(1), definition “P”, ‘on the day the employee starts long service leave’—

omit.

(2) Section 59(2), formula—

omit, insert—

$$\text{‘LSLP} = \frac{\text{S}}{220} \times 0.867 \times \text{P.’.}$$

Amendment of s 60 (Long service leave payment not payable in certain cases)

16. Section 60(1)—

omit.

Amendment of s 62 (Payments to employers)

17.(1) Section 62(1), formula—

omit, insert—

‘EP = S x 0.867 x P.’.

220

(2) Section 62(2), definition “P”, ‘on the day the employee starts long service leave’—

omit.

(3) Section 62(2), definition “S”, ‘employed under contract of employment by the employer’—

omit, insert—

‘engaged in the performance of building and construction work by the employer, other than as a person mentioned in section 3A(1)(b).³’.

Amendment of s 78 (Building and construction work for public authority)

18.(1) Section 78(a)(iii)—

omit, insert—

‘(iii) a non-Queensland government entity; and’.

(2) Section 78(b), ‘other body’—

omit, insert—

‘non-Queensland government entity’.

Insertion of new div hdg

19. Part 11, before section 116—

insert—

‘Division 1—Transitional provision for Building and Construction Industry (Portable Long Service Leave) Amendment Act 1994’.

³ Section 3A (Meaning of “eligible worker”)

Insertion of new div 2

20. After section 116—

insert—

‘Division 2—Transitional provisions for Building and Construction Industry (Portable Long Service Leave) Amendment Act 1998

‘Register of employees

‘117. From the commencement of this section, a reference in a document to the register of employees is taken, if the context permits, to be a reference to the register of workers.

‘Registered employees

‘118. A person who immediately before the commencement of this section was a registered employee is taken to be a registered worker from the commencement.’.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

section 3

1. Sections 9(2)(a) and 111 heading, ‘employee’—

omit, insert—

‘worker’.

2. Section 13(d), part 6, division 1 heading, sections 37, 41(1), (3) to (5), 43(1) and (4), 44(1)(a), 46, 49(1) and (2), 50, 51, 52(1) to (3), 53, 54(4), 56(2), 59(1), 60(2), 62(2), (4)(b) and (5), 71(2), 87(1)(b) and (e), 92(1) and (2) and 108(4)(b), ‘employees’—

omit, insert—

‘workers’.

3. Sections 37(2)(b), 38(1), 40(1), 41, 50, 52(1), (2) and (3)(a), 53, 54, 59(1), (5), (6) and (9)(a), 60, 61(1), (3) and (4), 62(1)(b), (2), (5), (6)(b) and (7), 63(1) and (2), ‘registered employee’—

omit, insert—

‘registered worker’.

4. Sections 39(1)(a), 41(2), 47(1), 49(1), 51, 54(3), 58, 61(1) and (3)(a), 62(4)(b) and 64, ‘an employee’—

omit, insert—

‘a worker’.

SCHEDULE (continued)

5. Sections 43(1) and (4), 44(1)(a), 46, 47(1), 49(2)(a) and 92(1), ‘employs’—

omit, insert—

‘engages’.

6. Sections 47(1)(a) and (b), 48(1)(b), (c) and (d), 49(2), 50(b), 51, 52(3), 54(2)(c) and (3), 58, 59(1), (6), (7), (8) and (9)(b), 60(1), 61(1) and (3), 62(2), (6) to (8), 63(2), 64, ‘the employee’—

omit, insert—

‘the worker’.

7. Sections 48(1)(b) and (c), 54(1) and 111, ‘employed’—

omit, insert—

‘engaged’.

8. Sections 59(5), (6) and (8) and 63(2), ‘employee’s’—

omit, insert—

‘worker’s’.

9. Section 58, heading, ‘Employees’—

omit, insert—

‘Workers’.