



Queensland

# **Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005**

**Act No. 27 of 2005**





Queensland

# Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005

## Contents

---

		Page
1	Short title .....	4
2	Commencement .....	4
3	Act amended .....	4
4	Amendment of title .....	4
5	Replacement of s 3A (Meaning of "eligible worker") .....	4
	3A Who is an eligible worker .....	4
	3B When an individual is not an eligible worker .....	5
6	Amendment of s 9 (Authority's functions) .....	6
7	Amendment of s 10 (Authority's powers) .....	7
8	Amendment of s 32 (Funds of authority) .....	7
9	Replacement of s 33 (Funds for training) .....	7
	33 Dealing with building and construction industry training levy .....	7
10	Replacement of s 46 (Cancellation of registration) .....	7
	46 Cancellation of registration as a registered employer	8
11	Amendment of s 46A (Authority may require information or documents from person believed to be employer) .....	8
12	Amendment of s 47 (Certificate of service to be supplied by employers) .....	8
13	Amendment of s 48 (Form and contents of certificate) .....	9
14	Amendment of s 59 (Amount of long service leave payment) ...	9
15	Amendment of s 61 (Election to take benefits under this Act or Industrial Relations Act) .....	9
16	Replacement of pt 8, hdg and s 66 .....	10
	Part 8 Levies	
	66 Imposition of levies .....	10

*Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005* No. 27, 2005

---

17	Amendment of s 67 (Notification of building and construction work) .....	10
18	Amendment of s 68A (Deciding who is person for whom work is to be done or was to be done) .....	11
19	Amendment of s 72 (Rate of levy) .....	11
20	Amendment of s 74 (Liability for levy) .....	12
21	Replacement of s 75 (When levy is payable) .....	12
	75        When levy is payable .....	12
22	Amendment of s 77 (Duty of assessment manager to sight approved form) .....	13
23	Amendment of s 79 (Voluntary performance of building and construction work) .....	14
24	Amendment of s 80 (Additional provisions about levy) .....	14
25	Amendment of s 84 (Interest on, and extension of time for payment of, levy) .....	15
26	Insertion of new s 91A .....	15
	91A        Arrangements with other entities .....	15
27	Amendment of s 105 (Proceedings for offences) .....	15
28	Insertion of new pt 11, div 4 .....	16
	Division 4        Transitional provisions for Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005	
	120        Eligible workers .....	16
	121        Notice of cancellation of employer's registration .....	16
29	Amendment of sch (Dictionary) .....	16
<b>Schedule</b>	<b>Minor amendments</b> .....	<b>18</b>



Queensland

# **Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005**

## **Act No. 27 of 2005**

---

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

**[Assented to 31 May 2005]**

**The Parliament of Queensland enacts—**

**1 Short title**

This Act may be cited as the *Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005*.

**2 Commencement**

This Act commences on 1 July 2005.

**3 Act amended**

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

**4 Amendment of title**

Title, from ‘, to allocate’ to ‘**construction industry**’—  
*omit.*

**5 Replacement of s 3A (Meaning of “eligible worker”)**

Section 3A—  
*omit, insert—*

**‘3A Who is an *eligible worker***

‘(1) An *eligible worker* is an individual who—

- (a) under a contract of service is engaged to perform work in the building and construction industry for the majority of the person’s ordinary hours of work; or
- (b) under a contract, whether or not the contract is a contract of service, or at piecework rates, is engaged to perform work in the building and construction industry, for labour only or substantially for labour only, for the majority of the person’s ordinary hours of work; or

- (c) under a contract, whether or not the contract is a contract of service, performs work in the building and construction industry for the majority of the person's ordinary hours of work, unless—
  - (i) the individual—
    - (A) is paid to achieve a stated result or outcome; and
    - (B) has to supply all, or substantially all, of the plant and equipment or tools of trade needed to perform the work; and
    - (C) is, or would be, liable for the cost of fixing a fault with the work performed; or
  - (ii) a personal services business determination is in effect for the individual performing the work under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60.

‘(2) Also, ***eligible worker*** includes—

- (a) an individual who is engaged to perform both work and supervision of other workers in the building and construction industry, whether or not the individual is known as a supervisor, leading hand or another title; and
- (b) an individual who is appointed as a safety officer to discharge workplace health and safety obligations under the *Workplace Health and Safety Act 1995* in relation to building and construction work, whether or not the person performs or usually performs building and construction work.

‘(3) This section is subject to section 3B.

### **‘3B When an individual is not an eligible worker**

‘(1) An individual is not an eligible worker if—

- (a) the individual performs work in the building and construction industry—
  - (i) in a managerial, clerical, professional or ancillary capacity; or

- (ii) under a contract of service with a partnership if the individual is a partner and participates in the management of the partnership or shares in its profits; or
    - (iii) under a contract of service with a government entity or a local government; or
  - (b) the individual is engaged under a contract of service with a non-Queensland government entity; or
  - (c) a regulation declares the individual is not an eligible worker because the work the individual performs is subject to stated coverage under a stated industrial instrument within the meaning of the *Industrial Relations Act 1999*.
- ‘(2) Also, an individual who would otherwise be an eligible worker under section 3A(1) or (2) is not an eligible worker if the individual is engaged to perform building and construction industry work by—
- (a) a government entity; or
  - (b) a local government; or
  - (c) Mount Isa Mines Limited ACN 009 661 447; or
  - (d) a person who is not substantially engaged in the building and construction industry.
- ‘(3) Subsection (2)(d) does not apply if the individual is a party to a contract with a labour hire agency that arranges for the individual to perform building and construction work for someone else under an arrangement between the agency and the other person.
- ‘(4) In this section—
- arrangement** includes agreement, promise, scheme, transaction, understanding and undertaking, whether express or implied.’.

## 6 Amendment of s 9 (Authority’s functions)

Section 9(1)(b)—

*omit, insert—*



‘(b) to collect building and construction industry training levy payable under this Act for payment to a building and construction industry training fund under this Act; and’.

## **7 Amendment of s 10 (Authority’s powers)**

Section 10(1)(f), as an example—

*insert—*

‘*Example for subsection (1)—*

collecting, under a contract or agreement, amounts that are not funds of the authority’.

## **8 Amendment of s 32 (Funds of authority)**

Section 32—

*insert—*

‘(3) Building and construction industry training levy paid to the authority is not part of the authority’s funds.’.

## **9 Replacement of s 33 (Funds for training)**

Section 33—

*omit, insert—*

## **‘33 Dealing with building and construction industry training levy**

‘As soon as practicable after receiving an amount of building and construction industry training levy, the authority must pay the amount to a building and construction industry training fund prescribed under a regulation to be held in trust for the training of persons in the building and construction industry.’.

## **10 Replacement of s 46 (Cancellation of registration)**

Section 46—

*omit, insert—*

**‘46 Cancellation of registration as a registered employer**

- ‘(1) If a registered employer stops engaging eligible workers to perform work in the building and construction industry, the registered employer may, by notice, apply to the authority for cancellation of the registration.
- ‘(2) If the authority refuses to cancel the registered employer’s registration, the authority must give the registered employer written notice of the refusal and the reason for the refusal.’.

**11 Amendment of s 46A (Authority may require information or documents from person believed to be employer)**

- (1) Section 46A(1), from ‘a person’—  
*omit, insert—*  
‘a person is or has been an employer in the building and construction industry, but is not or has not been registered as an employer under this division.’.
- (2) Section 46A(2), after ‘the person is’—  
*insert—*  
‘or has been’.
- (3) Section 46A—  
*insert—*
- ‘(6) The person must comply with the order, unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.’.

**12 Amendment of s 47 (Certificate of service to be supplied by employers)**

- (1) Section 47(1), ‘and the worker’—  
*omit.*
- (2) Section 47(2)—  
*renumber* as section 47(3).
- (3) Section 47—

*insert—*

- ‘(2) The employer must also make the information contained in the certificate of service available to the worker to whom the information relates.

Maximum penalty—40 penalty units.’.

- (4) Section 47—

*insert—*

- ‘(4) In this section—

*certificate of service*, for a worker, means a certificate in the approved form that complies with section 48.’.

### **13 Amendment of s 48 (Form and contents of certificate)**

- (1) Section 48(1)(a) and (g)—

*omit.*

- (2) Section 48(1)(b) to (f)—

*renumber* as section 48(1)(a) to (e).

### **14 Amendment of s 59 (Amount of long service leave payment)**

- (1) Section 59(5) to (10)—

*renumber* as section 59(6) to (11).

- (2) Section 59—

*insert—*

- ‘(5) Unless it is likely to be the last payment for a long service leave entitlement paid to the applicant by the authority, the authority must not pay the applicant for a period of long service leave that is less than 5 days.’.

### **15 Amendment of s 61 (Election to take benefits under this Act or Industrial Relations Act)**

- (1) Section 61(1), ‘credited under part 6, division 3 with service’—

*omit, insert—*

‘paid long service leave’.

- (2) Section 61(3), ‘credited under part 6, division 3 with any service that’—

*omit, insert—*

‘paid long service leave for service’.

## **16 Replacement of pt 8, hdg and s 66**

Part 8, heading and section 66—

*omit, insert—*

## **‘Part 8 Levies**

### **‘66 Imposition of levies**

‘The following levies are imposed on building and construction work—

- (a) building and construction industry training levy;
- (b) long service leave levy.’.

## **17 Amendment of s 67 (Notification of building and construction work)**

- (1) Section 67(1), after ‘must be filed’—

*insert—*

‘, as required under subsection (2),’.

- (2) Section 67(2)—

*renumber* as section 67(3).

- (3) Section 67—

*insert—*

- ‘(2) The approved form must be filed—

- (a) if a development permit under the *Integrated Planning Act 1997* is required for the work—before the permit is given; or
  - (b) if an approval under the *Plumbing and Drainage Act 2002* is required for the work—before the approval is given; or
  - (c) otherwise—before the work starts.’.
- (4) Section 67—  
*insert—*
- ‘(4) Also, if the actual cost of carrying out building and construction work is at least \$50 000 more than the amount on which the levy payable for the work was calculated, the person for whom the work was done must, within 30 days after the work ends—
- (a) give the authority notice of the increased cost of the work; and
  - (b) pay to the authority the additional amount of levy payable because of the increased cost.
- Maximum penalty for subsection (4)—40 penalty units.’.

**18 Amendment of s 68A (Deciding who is person for whom work is to be done or was to be done)**

Section 68A—

*insert—*

- ‘(6) The person must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.’.

**19 Amendment of s 72 (Rate of levy)**

Section 72(1)—

*omit, insert—*

- ‘(1) A regulation may prescribe percentages of the cost of building and construction work as the amount imposed for the following—
- (a) building and construction industry training levy;
  - (b) long service leave levy.’.

## **20 Amendment of s 74 (Liability for levy)**

- (1) Section 74(d)—  
*renumber* as section 74(e).
- (2) Section 74—  
*insert*—
- ‘(d) if none of paragraphs (a), (b) and (c) apply and under the *Plumbing and Drainage Act 2002* an application is made to a local government for an approval that authorises plumbing or drainage work—the applicant under that Act; or’.

## **21 Replacement of s 75 (When levy is payable)**

Section 75—  
*omit, insert*—

## **‘75 When levy is payable**

- ‘(1) Levy for building and construction work to be carried out by a person must be paid—
- (a) before either of the following is given—
    - (i) a development permit under the *Integrated Planning Act 1997* in relation to work that authorises building work, plumbing or drainage work or operational work as defined under that Act;
    - (ii) an approval under the *Plumbing and Drainage Act 2002* that authorises plumbing or drainage work for which a development permit under the *Integrated Planning Act 1997* is not required; or

- (b) if a development permit or an approval mentioned in paragraph (a) is not given, before the work is started.
- ‘(2) For subsection (1), the authority may, on written application, allow a later time for payment in a particular case.

*Note—*

Under section 82, levy may also be paid by instalment in particular circumstances.’.

## 22 **Amendment of s 77 (Duty of assessment manager to sight approved form)**

- (1) Section 77(2) to (4)—  
*renumber* as section 77(3) to (5).
- (2) Section 77(1)—  
*omit, insert—*
  - ‘(1) This section applies if an application is made to—
    - (a) an assessment manager, for a development permit under the *Integrated Planning Act 1997* that authorises building work, plumbing or drainage work or operational work as defined under that Act; or
    - (b) a local government, for an approval under the *Plumbing and Drainage Act 2002* that authorises plumbing or drainage work for which a development permit under the *Integrated Planning Act 1997* is not required.
  - ‘(2) The assessment manager or local government (the ***relevant authority***) must not give the development permit or the approval unless the relevant authority has seen—
    - (a) an approved form issued by the authority that clearly shows—
      - (i) that the levy or the first instalment of the levy has been paid; or
      - (ii) that an exemption from payment of the levy exists in relation to the work; or
      - (iii) that an exemption from immediate payment of levy exists in relation to the work; or

- (b) written advice from the authority stating something mentioned in paragraph (a).

Maximum penalty—40 penalty units.’.

- (3) Section 77(5), as renumbered, ‘Subsections (1) and (3)’—  
*omit, insert*—  
‘Subsections (2) and (4)’.

**23 Amendment of s 79 (Voluntary performance of building and construction work)**

Section 79(1), from ‘an entity’—

*omit, insert*—

‘an entity if, in the authority’s opinion—

- (a) the entity is a non-profit organisation; or  
(b) the purpose for which the voluntary component of building and construction work is to be carried out is a charitable purpose.’.

**24 Amendment of s 80 (Additional provisions about levy)**

- (1) Section 80(1)—

*omit, insert*—

- ‘(1) This section applies in relation to building and construction work for which the authority believes, on reasonable grounds, that levy is payable.’.

- (2) Section 80(5) to (7)—

*renumber* as section 80(6) to (8).

- (3) Section 80—

*insert*—

- ‘(5) The person must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.’.

- (4) Section 80(7), as renumbered, ‘subsection (5)’—



*omit, insert—*

‘subsection (6)’.

**25 Amendment of s 84 (Interest on, and extension of time for payment of, levy)**

Section 84(2)—

*omit, insert—*

- ‘(2) Interest payable under subsection (1) forms part of the unpaid levy and may be recovered as a debt in a court having jurisdiction up to the amount of the unpaid levy.’.

**26 Insertion of new s 91A**

After section 90—

*insert—*

**‘91A Arrangements with other entities**

- ‘(1) For the purposes of this Act, the authority may, from time to time, enter into an agreement with an entity in Queensland to carry out an arrangement in relation to—
- (a) the payment of long service leave to persons engaged in the building and construction industry; and
  - (b) the exchange of information about credits and entitlements to payments between the authority and the entity; and
  - (c) matters related to a matter mentioned in paragraph (a) or (b).
- ‘(2) An agreement under subsection (1) may be amended or cancelled by a later agreement.’.

**27 Amendment of s 105 (Proceedings for offences)**

Section 105—

*insert—*

- ‘(3) A provision of this Act that provides for an offence for failing to comply with an order of a court does not limit the power of the court to punish for contempt.’.

**28 Insertion of new pt 11, div 4**

After section 119—

*insert—*

**‘Division 4 Transitional provisions for Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005**

**‘120 Eligible workers**

‘An individual who, immediately before 1 July 2005, was an eligible worker because of the person’s employment continues to be an eligible worker while continuing in that employment after 30 June 2005.

**‘121 Notice of cancellation of employer’s registration**

‘Section 46, as in force immediately before 1 July 2005, continues to apply to a notice of cancellation of an employer’s registration given before 1 July 2005, but not received by the authority before 1 July 2005.’.

**29 Amendment of sch (Dictionary)**

- (1) Schedule, definitions *contract of employment* and *levy*—

*omit.*

- (2) Schedule—

*insert—*

***‘building and construction industry training levy*** means levy that is imposed under part 8, and includes—

- (a) an additional amount of levy imposed under section 80;<sup>1</sup>  
and
- (b) any interest under section 84.<sup>2</sup>

**levy** means—

- (a) building and construction industry training levy; and
- (b) long service leave levy.<sup>3</sup>

---

1 Section 80 (Additional provisions about levy)

2 Section 84 (Interest on, and extension of time for payment of, levy)

## **Schedule                      Minor amendments**

section 3

- 1            Section 40(4)(b), ‘or (c)’—**  
*omit, insert—*  
‘or (2)’.
- 2            Section 56(1)(b), ‘section 57(1)’—**  
*omit, insert—*  
‘section 57’.
- 3            Section 59(2), ‘section 57’—**  
*omit, insert—*  
‘section 56’.
- 4            Section 80(2), ‘any one’—**  
*omit, insert—*  
‘anyone’.
- 5            Sections 81(1) and (2), 82(1), (6), (7) and (8), 83(1), 84(1),  
(2) and (3), 85(3), 86, 106(3) and (5)(c) and 109, ‘long  
service leave’—**  
*omit.*
- 6            Section 85(2), ‘Long service leave levy’—**  
*omit, insert—*  
‘Levy’.

Schedule (continued)

**7 Section 90(2), ‘to which subsection (3) applies’—**

*omit, insert—*

‘mentioned in subsection (3)’.

**8 Section 90(3), ‘This section applies to—’—**

*omit, insert—*

‘The matters are—’.