

# **BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) BILL 1994**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The principal objectives of this Bill are to:

- provide relief for owner-builders from payment of the portable long service leave levy;
- impose liability for payment of the levy for building and construction work carried out for the Commonwealth Government on the contractor engaged to carry out that work;
- provide for substantial improvement in the operation of the scheme, its efficiency and its cost effectiveness.

### **NOTES ON PROVISIONS**

#### *Clause 1—Short Title*

This section provides a short title of the Act.

#### *Clause 2—Commencement*

This section provides that the date of commencement for the Act will be 1 January 1995.

*Clause 3—Act Amended*

This section provides that the *Building and Construction Industry (Portable Long Service Leave) Act 1991* is the principal Act to be amended.

*Clause 4—Amendment of Section 3 (Interpretation)*

This amendment adjusts existing definitions and provides new definitions to reflect amendments to the Act.

*Clause 5—Replacement of Section 4 (Act binds Crown)*

This amendment revises section 4 to update it to current terminology.

*Clause 6—Insertion of new Part 1 A*

The Act is amended to insert new Part 1A in relation to the Building and Construction Industry (Portable Long Service Leave) Authority.

***Proposed Section 4A—Establishment of Authority***

This section provides for the establishment of the Building and Construction Industry (Portable Long Service Leave) Authority.

***Proposed Section 4B—Legal status of Authority***

This section outlines the legal status of the Authority.

***Proposed Section 4C—Authority may operate under trading name***

This section allows the Authority to operate under a trading name prescribed by regulation.

***Proposed Section 4D—Authority's functions***

This section outlines the functions of the Authority. Specifically, the section provides that the primary function of the Authority is to provide an equitable and efficient system of portable long service leave for employees in the building and construction industry. In addition, the section provides

that the Authority's other functions are to provide educational and awareness programs, to give recommendations and advice to the Minister and to perform other functions as given under this Act or another Act or prescribed by regulation.

### ***Proposed Section 4E—Authority's Powers***

This section provides that the Authority has all the powers of an individual and the powers given to it under this Act or another Act. The section allows the Authority to exercise its powers inside and outside Queensland and outside Australia. However, subsection 3 requires that, if the Authority intends to exercise borrowing powers, a regulation is to be made under section 47 of the *Statutory Bodies Financial Administration Act 1982*, declaring which provisions of Part IV of that Act apply to the borrowing and the terms of the application of these provisions.

### ***Clause 7—Replacement of Part Heading***

This amendment changes the heading of part 2 from “Building and Construction Industry (Portable Long Service Leave) Board” to “Other provisions about the Authority.”

### ***Clause 8—Replacement of Sections 5 to 8***

This amendment omits sections 5 to 8 and inserts new sections 5, 6 and 7 as these have been redrafted. Section 8 (Deputies of Members) has been omitted as Deputies of Members will not be required. A new section 8 has been inserted in relation to appointment of directors.

### ***Proposed Section 5—The board***

This section provides that the Authority is to have a board of directors.

### ***Proposed Section 6—Role of board***

This section outlines the role of the board. It defines the role to include responsibility for the commercial policy and overall management of the Authority and provides for the board to give advice and to make recommendations to the Minister.

***Proposed Section 7—Composition of board***

This section includes a change of name from board member to director throughout and is more simply worded.

***Proposed Section 8—Appointment of directors***

This section proposes that directors be appointed by Governor in Council. The section does not require the appointments to be gazetted in the Industrial Gazette as previously required.

***Clause 9—Omission of Section 18 (Authentication of documents)***

This amendment omits section 18 as, with the separation of functions between the Board and the Authority, it is no longer required.

***Clause 10—Replacement of Section 23 (Functions of Manager)******Proposed Section 23—Duties of general manager***

This section provides for the general manager to manage the Authority under the direction of the Board.

***Proposed Section 23A—Things done by general manager***

This section provides for the general manager to act on behalf of the Authority.

***Clause 11—Insertion of new Section 27A***

This section provides the power for the Authority to appoint a funds manager subject to prior approval of the Treasurer and outlines the provisions under which the funds manager is to operate.

*Clause 12—Replacement of Section 29 (Actuarial investigation of funds)*

***Proposed Section 29—Actuarial Investigation of Funds***

This section specifies the timing of mandatory actuarial investigations of the scheme and details reporting requirements to the Minister in relation to actuarial opinions and the sufficiency of the scheme's funds.

***Proposed Section 29A—Application of Finance Acts***

This section provides for the Authority to be a statutory body within the meaning of the *Financial Administration Audit Act 1977* which specifies its financial, audit and reporting obligations. The section also provides for the Authority to be a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* and provides that part 5 of that Act applies to the Authority. Part 5 specifies investment powers and approval mechanisms for the Authority to obtain those powers.

*Clause 13—Amendment of Section 31 (Application for registration)*

This amendment allows the Authority to require an applicant to supply such information and documents relevant to the application and to ask for the information or documents to be verified by statutory declaration. The amendment further allows the Authority to refuse the application if the applicant fails to comply with the request without reasonable excuse.

*Clause 14—Amendment of Section 32 (Approval or refusal of application for registration)*

This amendment requires the Authority to give an applicant reasons for a refusal of application for registration.

*Clause 15—Amendment of Section 33 (Date of registration)*

This amendment provides that the Authority must not fix a date for registration earlier than 1 July 1992, being the commencement date of the Act.

*Clause 16—Amendment of Section 36 (Application for registration)*

This amendment provides that an employer may be required to provide additional information on an employer application form and that the form may require an employer to provide other information or produce documents that, in the Authority's opinion, are relevant. In addition, the amendment permits the Authority to require further information or documents to be provided by an applicant, in order to satisfy itself that the applicant is an employer in the building and construction industry. The Authority may ask for information or documents to be verified by statutory declaration. It is an offence not to provide this information or the documents without a reasonable excuse.

*Clause 17—Replacement of Sections 37 to 39****Proposed Section 37—Approval or refusal of application for registration***

This section requires the Authority to approve or refuse an employer application and, if refused, to give reasons to the applicant for that refusal.

***Proposed Section 38—Employer to notify Authority of any change in circumstance***

This section provides that it is an offence for an employer not to notify the Board of any change to details given on an employer application form under section 36(3), or additional information or documents given to the Authority under section 36(4), within 14 days of the change happening.

*Clause 18—Replacement of Section 43 (Exemptions)*

This amendment rearranges the wording in the existing section, simplifying the requirements for an employer to be exempt from furnishing certificates of service. The amendment also provides that, if the Authority revokes an employer's exemption, it must give the employer reasons for the revocation.

*Clause 19—Amendment of Section 53 (Amount of long service leave payment)*

This amendment simplifies the wording in the existing provision and provides a definition of “relevant award or agreement.”

*Clause 20—Insertion of new sections 60A and 60B*

The insertion of new sections 60A and 60B clarifies the offences in relation to existing section 68 which specifies that a person liable to pay a levy must lodge a form and pay the levy. Section 68 has been omitted.

***Proposed Section 60A—Notification of building and construction work***

This section provides that, if building and construction work is to be carried out, an approved form must be lodged with the Authority or its agent. A form is not required for specified work prescribed in the regulation. This is currently for any building and construction work with a value less than the threshold. It is an offence not to lodge a form.

***Proposed Section 60B—Offence for failure to pay levy***

This section provides that unless a person is exempt under Section 63, the person liable to pay the levy must pay to the Authority or its agent the amount of levy at, or before, the time for its payment. It is an offence not to pay the levy.

*Clause 21—Replacement of Sections 62 and 63*

***Proposed Section 62—No levy for certain building and construction work***

This section provides that no levy is payable for building and construction work that started before 1 July 1992 and for specified building and construction work or a specified part of specified building and construction work prescribed by regulation.

***Proposed Section 63—Exemption from payment of levy***

This section provides for the full exemption of owner-builders from payment of the long service leave levy. Further, the section provides an exemption for a person not substantially engaged in the building and construction industry from payment of the levy on building and construction work carried out for the person, by the person or the person's employee.

***Clause 22—Replacement of Sections 65 and 65A******Proposed Section 65—Meaning of “Cost of building and construction work”***

This section defines the cost of building and construction work to be the contract price for the work or, if the work is being done for someone other than the Commonwealth and involves more than one contract, the total of the contract prices. The section also permits the cost of work to be determined by the Authority where there is no contract price or where the Authority is satisfied that the contract price/s is not an accurate estimate of the cost of the work.

***Proposed Section 65A—Liability for levy***

This section provides for the levy to be paid by contractors engaged by the Commonwealth Government or, if an application for building approval is made to a local government for a person other than the Commonwealth, the person who makes the application is to pay the levy. In all other cases, the levy is to be paid by the person for whom the work is being carried out.

***Clause 23—Amendment of Section 65D (Duty of local authority to sight approved form)***

This amendment excludes the requirement for local governments to sight an approved form signifying payment of the levy for building and construction work with a value less than the threshold specified in the regulation.



*Clause 24—Replacement of Section 67 (Voluntary performance of building and construction work)*

This amendment provides that a long service leave levy is not payable for voluntary labour or donated building materials or both, where building and construction work is carried out for a non profit organisation. The amendment also simplifies wording of the section.

*Clause 25—Omission of Section 68 (Offence for failure to pay levy)*

This amendment omits section 68 which is provided for under sections 60A and 60B of the Bill.

*Clause 26—Replacement of Section 70 (Additional levy)*

This amendment includes a requirement for a person liable to pay a levy to provide both documents and information concerning their building and construction work, including the actual cost of carrying out the work, where asked for in a written notice issued by the Authority. The amendment also requires a person liable to pay an additional levy to pay the additional levy to the Authority without delay. It is an offence not to provide documents and information and not to pay an additional levy. The amendment further specifies that an additional levy may be claimed and ordered in a recovery action or in a prosecution for failure to pay the additional levy.

*Clause 27—Amendment of Section 72 (Payment of levy by instalments)*

This amendment specifies that the first instalment payment cannot be less than an amount equivalent to the levy calculated on the building and construction work prescribed by the regulation (currently \$1 million) and simplifies the wording of the previous sub sections (1) and (2).

*Clause 28—Amendment of Section 74 (Interest on, and extension of time for payment of levy)*

This amendment includes a new provision for the Authority to allow a levy to be payable by instalments at intervals decided by the Authority where there are special circumstances. This provision is in addition to section 72 which allows instalments to be paid only for work with a value

of \$1 million or more and the timeframe for completion is in excess of one year.

*Clause 29–Amendment of Section 75 (Recovery of levy)*

This amendment provides that, when the long service leave levy becomes payable to the Authority, it is a debt payable to the Authority.

*Clause 30–Amendment of Section 77 (Reconsideration by board)*

This amendment provides that a person may apply to the Authority in writing to give further consideration to a matter within 45 days and clarifies how a period longer than 45 days is to be prescribed.

*Clause 31–Replacement of Section 78 (Appeal to Industrial Magistrate)*

This amendment provides additional information on the appeal process, the possible outcomes of the appeal, and the power of the Industrial Magistrate in making a determination and an order about costs. The section also allows for a regulation to provide for the way an appeal may be started and conducted and the powers of an Industrial Magistrate to summons witnesses and documents.

*Clause 32–Amendment of Section 82 (Keeping of books and records)*

This amendment provides for a new section heading “Keeping, and inspection of books and records” and requires a person who employs employees to perform building and construction work to keep books, records and particulars about the employees as prescribed under the regulations. Each book and record must be preserved for at least 6 years after the last entry is made in it. The section also ensures that an Authorised Officer has access to inspect and to take copies of books or records at a reasonable time and place nominated by the Authorised Officer. It is an offence not to comply with the requirements of this section. There is also a requirement for a request to make books and records available for inspection to be confirmed in writing as soon as practicable.

*Clause 33—Amendment of Section 89 (General powers of authorised officer in relation to places)*

This amendment clarifies section 89 to enable an authorised officer to take into a place any person required to assist with an inspection.

*Clause 34—Amendment of Section 95 (Proceedings for offences)*

This amendment provides that a prosecution for an offence against this Act may be started within one year after the commission of the offence or within one year after the offence comes to the knowledge of the Authority, providing that a prosecution may not take place after a period of two years has elapsed from when the offence was committed. Subsection (2) which limited the institution of proceeding for an offence to the Manager or any other person authorised by the Manager has been omitted.

*Clause 35—Replacement of Sections 97 and 98*

***Proposed Section 97—Powers of Industrial Magistrate***

This section provides that an Industrial Magistrate has all the powers of an Industrial Magistrate under the Industrial Relations Act 1990, as appropriate, for issues to be decided under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

***Proposed Section 98—Evidentiary provisions***

This section outlines provisions in relation to evidence regarding appointments, actions, signatures, records, the register of employees, the register of employers, applications for registrations, certificates of service and commencement of a proceeding. The wording of the section has also been simplified.

*Clause 36—Insertion of new Part 10*

***Proposed Section 103—Members of the Board***

This section preserves the status of the existing Board Members.

***Proposed Section 104—Authority is legal successor of the Board***

This section provides that the Authority is the legal successor of the Building and Construction Industry (Portable Long Service Leave) Board and acquires the assets and liabilities of the Board.

***Proposed Section 105—Legal proceedings***

This section allows the continuance and completion of legal proceedings by or against the Building and Construction Industry (Portable Long Service Leave) Board by or against the Authority.

***Proposed Section 106—References to Board***

This section provides that a reference to the Building and Construction Industry (Portable Long Service Leave) Board at the commencement in an Act or instrument or other document is taken to be a reference to the Authority.

***Proposed Section 107—Numbering and renumbering of Act***

This section specifies that section 43 of the *Reprints Act 1992* must be used in the next reprint of this Act.

***Clause 1-10—Minor amendments***

A schedule of minor amendments has been included to correct outdated references, and as a result of the terms which have been changed in the process of separating the Board from the organisation. The amendments also include a change from the term “Manager” to “General Manager” and a change from the term “common seal” to “seal”.