

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

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of this Bill are to:

- provide for monies equivalent to 0.05% of leviable building and construction work to be transferred each financial year from the Building and Construction Industry (Portable Long Service Leave) scheme to a trust fund for the provision of training for persons in the building and construction industry.
- provide for scaled down long service benefits after 10 years, with no pro rata payment prior to ten years, for eligible workers;
- extend eligibility to labour only sub-contractors, forepersons and sub-forepersons

Reasons for the Bill

The building and construction industry is marked by critical shortages and poor skills development. Attrition of skills from the industry is not being matched by new trained workers, as the nature of the industry, where the major proportion of employees are sub-contractors, mitigates against training.

The establishment of a building and construction industry training fund will contribute substantially to the alleviation of problems currently being experienced. In some other States, specific training levies have been established to provide training funds and have been successful in supporting

training in those States' building and construction industries.

Creation of a training levy for the building and construction industry in Queensland would impose a financial burden of approximately \$5M per annum on clients of the industry at a time when the industry is recovering from a down turn. The bill, therefore, provides for funds to be allocated for the provision of training for persons in the building and construction industry from funds surplus to requirements in the Building and Construction Industry (Portable Long Service Leave) scheme.

A substantial proportion of the product in the building and construction industry in Queensland is delivered through sub-contractors, a significant number of whom provide labour only under PPS taxation arrangements. In the past, these workers have been excluded from long service leave and this has created an inequity in the industry. The bill provides for sub-contractors who provide labour only to be eligible for long service leave entitlements under the Building and Construction Industry (Portable Long Service Leave) scheme.

Similarly, employees who have been members of the Building and Construction Industry (Portable Long Service Leave) scheme in the past are no longer able to accrue service when they are promoted to supervisory positions as these positions are not currently eligible under the scheme. It creates an inequity for these workers simply because they have been promoted to a higher position. The Bill redresses this inequity by extending eligibility to forepersons and sub-forepersons.

The Bill also allows for payment of scaled down long service benefits of 8.67 weeks after 10 years, with no pro rata payment prior to 10 years, for eligible workers who are registered with the Building and Construction Industry (Portable Long Service Leave) scheme. This amendment will encourage workers to stay in the industry and will allow a larger number of workers to receive benefits from the portable long service leave scheme.

Estimated Cost for Government Implementation

There will be no cost for the Government in terms of implementation as the scheme is fully self funded.

Consultation

Construction Training Queensland, the Industry Training Advisory Body (ITAB), has consulted its member bodies, including its regional committees.

Construction Queensland, the joint industry strategy body, has been consulted.

The Building and Construction Industry (Portable Long Service Leave) Authority, the Business Regulation Review Unit, the Department of the Premier and Cabinet, the Department of Public Works and the Department of Housing have been consulted.

Other Government agencies have been consulted throughout the Cabinet process.

NOTES ON PROVISIONS

Clause 1 provides a short title of the Act.

Clause 2—Commencement.

This clause provides for commencement of the Amendment Act on 1 October 1998.

Clause 3—Act Amended.

This clause indicates that the *Building and Construction Industry (Portable Long Service Leave) Act 1991* is the Act which is being amended.

Clause 4—Amendment of Title.

This clause extends the title of the Act to include allocation of funds for training in the building and construction industry.

Clause 5—Amendment of Section 3 (Definitions).

This amendment deletes old definitions and provides new definitions which reflect other amendments to the Act.

Clause 6—Insertion of new Section 3A

This clause provides for a new definition for “eligible worker”, including labour only sub-contractors, forepersons and sub-forepersons. Consistent with the existing legislation, employees of a local government, a government entity or a non-Queensland government entity are not deemed to be eligible workers. Similarly, a person engaged in a managerial, clerical, professional or ancillary capacity is not eligible.

The clause also allows for a regulation to declare that a person is not an eligible worker.

Clause 7—Amendment of Section 9 (Authority’s functions)

This clause extends the Authority’s primary function to now include provision of funds for training for persons in the building and construction industry.

Clause 8—Insertion of new Section 33

This clause allows funds of the Authority to be used for provision of training for persons in the building and construction industry and specifies how the amount is to be calculated.

The clause also allows for the amount to be paid as a grant to a building and construction industry training fund to be held in trust by an entity prescribed under a regulation. The process for paying the funds is to be set out in a regulation.

Clause 9—Amendment of Section 40 (Date of Registration)

This clause prevents the Authority from back dating the date of registration for employees to a date earlier than 1 July 1992 and for labour only sub-contractors, forepersons and sub-forepersons to a date earlier than 1 October 1998.

Clause 10—Amendment of Section 50 (Number of Days’ Service).

This clause changes the terminology of “employed under a contract of employment” to “engaged” and “employment” to “engagement” to facilitate inclusion of labour only sub-contractors in the scheme.

The clause also creates a new sub-section 2 to ensure that service is not credited to sub-contractors unless they work under a contract for labour only.

Clause 11—Amendment of Section 52 (Limitations on Service Credits).

This clause amends Section 52 to delete reference to Section 57(1)(a) to (d) which contained previous long service leave entitlements based on 13 weeks after 15 years or more service.

(Section 57 is amended in clause 13 to reflect the new entitlement of 8.67 weeks after ten years service.)

The clause also simplifies the reading of the sub-sections amended.

Clause 12—Amendment of Section 56 (Application for entitlement to long service leave).

This clause amends Section 56(1) to allow for registered workers to apply for long service leave if they have been credited with 10 years' service in the register of workers.

Clause 13—Amendment of Section 57 (Entitlement to long service leave).

This clause deletes the previous entitlement to long service leave of 13 weeks after 15 years service and replaces it with a new entitlement of 8.67 weeks after 10 years service. The clause also stipulates the accrual rate for long service leave after 10 years.

Clause 14—Amendment of Section 59 (Amount of long service leave payment).

This clause amends the payment formula to reflect the new entitlement of 8.67 weeks after ten years and deletes unnecessary wording in section 59(1).

Clause 15—Amendment of Section 60 (Long service leave payment not payable in certain cases).

This clause deletes Section 60(1) as it is no longer required.

Clause 16—Amendment of Section 62 (Payments to Employers).

This clause amends the formula for payments to employers to reflect the new entitlement of 8.67 weeks after 10 years service.

The clause also makes amendments to remove unnecessary wording and to bring the section into line with other amendments to the Act.

Clause 17—Amendment of Section 78 (Building and construction work for public authority)

This clause replaces outdated terminology with the term "Anon Queensland Government entity", which is defined in clause 5(2).

Clause 18—Insertion of new division heading

This clause inserts a new heading for a transitional provision for the *Building and Construction Industry (Portable Long Service Leave) Amendment Act 1994*, to identify section 116 as relating to that Amendment Act.

Clause 19—Insertion of new division 2

This clause inserts a new division for transitional provisions for the *Building and Construction Industry (Portable Long Service Leave) Amendment Act 1998*. The transitionals allow, on commencement of this Act, for a reference to the register of employees to be taken to be a reference to the new register of workers and for a person who was a registered employee immediately before commencement, to be taken to be a registered worker after commencement.

MINOR AND CONSEQUENTIAL AMENDMENTS

A Schedule of amendments has been included to reflect new terms which have resulted from amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

These relate predominantly to the change in terms of “employee” to “worker” and “employs” to “engages” throughout a number of sections and headings in the Act.