

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

Explanatory Notes

Objectives of Legislation Amendments

The objective of the legislation is to provide for miscellaneous amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* which is administered by QLeave.

The principal objectives of the amendments to the Act are to:

- Identify the current QLeave collection for building and construction industry training purposes as a separate levy;
- Increase the training levy amount from 0.05% to 0.1% of the cost of building work;
- Adjust the portable long service leave levy accordingly from 0.175% to 0.125% of the cost of building work; and
- Introduce a range of minor amendments of a housekeeping nature to simplify and maximize the legislative intent of the *Building and Construction Industry (Portable Long Service Leave) Act 1991 and Regulation 2002*.

Reasons for the Legislation Amendments

At present the Building and Construction Industry (Portable Long Service Leave) Act 1991 allows for the funds of the Building and Construction Industry Portable Long Service Leave Authority, (trading as QLeave), to be allocated for construction industry training. Under the Act 0.05% of the total 0.175% of project costs collected by the long service leave levy is provided to the Building and Construction Industry Training Fund (BCITF) for training purposes.

Currently, Australia does not have enough skilled workers to carry out the major infrastructure and building projects required over the next 10 years. Severe skill shortages are being experienced in Queensland where multi

million dollar projects are placing enormous demands on the construction skills base, while at the same time population growth fuels record levels of building activity in the housing sector.

Further, the provision of training has not grown in line with the sector, and current training rates are considered unsustainably low.

It is proposed to increase the training provision from 0.05% to 0.1% as a means of expanding BCITF programs and activities to encourage new entry level commencements and assist unqualified workers gain trade qualification outcomes. The training contribution will also be identified as a separate levy from the long service leave levy.

It is anticipated that the increased funding to the BCITF will provide support for some additional 2,000 new entry level apprenticeship commencements and additional skills development and training for over 1,000 existing workers who are not fully qualified to gain trade qualifications.

Costs for Government Implementation

The amendments have included a provision for QLeave to deduct reasonable expenses in the collection of the new training levy and as such there will be no additional costs to Government or QLeave for implementation.

Fundamental Legislative Principles

The provisions of the amendments to the Act are consistent with the fundamental legislative principles provided under the Legislative Standards Act 1992.

Consultation

All employee and employer associations support an increase to the BCITF levy rate and the proposed amendments to Governance arrangements.

Government agencies indicate support for the principles behind an increased quantum and the application of funds generated towards activities that increase entry and participation into this industry's workforce.

An increase to the levy quantum will impact upon agencies and the State capital program, though it is acknowledged that the benefits of this

proposal are realized through an expanded, skilled workforce which will over time positively impact on agencies.

Notes on Amendments

Part 1 Preliminary

Short title (section 1)

Clause 1 provides a short title of the Act as the *Building and Construction Industry (Portable Long Service Leave) Act 2005*.

Commencement

Clause 2 requires that the provisions of the Act will commence on 1 July 2005.

Act amended

Clause 3 provides for this Act to amend the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of title

Clause 4 amends the title of the Act to omit the allocation of funds for training in the building and construction industry. There will no longer be an allocation of funds from the Building and Construction portable long service leave levy because a separate training levy is being established for that purpose.

Who is an “eligible worker” (section 3A(1))

Clause 5 aligns to the definition of “eligible worker” outlined in clauses 1 and 2 of the Second Schedule to the *Workers Compensation and Rehabilitation Act 2003*. This definition reflects the current position and

QLeave practice and will have the added advantage of introducing a level of uniformity with WorkCover and other public sector agencies. No worker will be disadvantaged by this amendment and it should assist in alleviating possible confusion caused by existing differences in the worker definition in several pieces of state legislation.

The proposed section 3(b)(2) also seeks to avoid a possible clash with fundamental legislative principles by including in the Bill several known categories of ineligible workers who are currently identified in the Regulation. The only categories of ineligible workers that will subsequently remain in the Regulation will be those subject to identified industrial awards or agreements because of the propensity of these awards and agreements to change from time to time.

Part 2 Building and Construction Industry (Portable Long Service Leave) Authority

Division 1 Establishment of authority

Authority's functions (section 9)

Clause 6 removes the provision of funds for training in the building and construction industry from the functions of the authority, (section 9(1)(b)), and replaces it with the new function of collecting the new building and construction training levy introduced with these amendments.

Authority's powers (section 10)

Clause 7 amends section 10(1) of the Act to make provision for the authority to recoup expenses incurred in the collection of amounts that are not funds of the authority because the new training levy funds will not be funds of the authority.

Part 5 Financial Provisions

Funds of authority (section 32)

Clause 8 makes it clear that the funds collected by QLeave for the new training levy are not part of the authority's funds to avoid any possible confusion.

Funds for training (section 33)

Clause 9 deletes the whole of the existing section 33 from the Act. This section provided for the allocation of funds for training from the portable long service leave levy. These funds will now be provided for by the new separate training levy.

A new section 33 is inserted providing that the funds collected under the new training levy must be paid by the authority as soon as practicable after collection, to a training fund identified in the Regulation.

Part 6 Registration and Service Credits

Division 2 Register of employers

Cancellation of registration (section 46)

Clause 10 permits the authority to undertake an assessment under section 46 and make a determination regarding any employer's application to cancel registration prior to any cancellation occurring. The authority must advise the employer in writing if it refuses to cancel the registration and also provide the reason for the refusal.

Previously under section 46 the authority had no ability to assess whether the employer did, in fact, no longer engage workers and whether cancellation of the employer registration was appropriate.

Authority may require information or documents from person believed to be employer

Clause 11 adds a provision - section 46A(6) – requiring a person to comply with any court order imposed under section 46A(5) and provides a penalty for failing to comply.

The amendment of section 46(A)(1) gives power to the authority to obtain information from a person who has been an employer not only those currently engaging workers.

This will assist compliance as there have been instances where persons have relied on the difficulty of enforcement through the absence of a penalty for a breach of the requirement.

Certificate of service to be supplied by employers (section 47)

Clause 12 removes the obligation on the employer under section 47 to supply a copy of the certificate of service to the worker. Currently employers must give a certificate of service to QLeave for each worker providing details of that worker's service for the relevant period. A copy of the certificate must be provided to the worker. With electronic data lodgement increasing this requirement is becoming impractical.

The new provision will require the employer to make the relevant service information available to the worker but with the format unspecified.

A new section 47(4) clarifies the meaning of “certificate of service”.

Form and contents of certificate (section 48)

Clause 13 provides that an employer is now not required to sign a certificate of service as the certificate may be lodged through electronic means. The certificate of service must be verified in any way deemed necessary by the authority including by statutory declaration.

Part 7 Long Service Leave

Amount of long service leave payment (section 59)

Clause 14 provides for a registered worker, who has service credits in the register of workers and applies to the authority for long service leave, to

access a minimum of 5 days long service leave at any one time. This will provide some consistency with other States provisions and general industry standards.

Payment can be made for less than 5 days only if it is likely to be the worker's last payment and a small unused leave benefit is being paid out.

Election to take benefits under this Act or Industrial Relations Act (section 61)

Clause 15 provides that credits for long service leave which are taken and paid by the employer under the *Industrial Relations Act 1999* are not to be paid again by the authority. However, the credits can remain in the authority's register as a record and be recognized as part of a qualifying period for future entitlement.

Part 8 Levies

Imposition of levies (section 66)

Clause 16 provides for Part 8 of this Act to be known as "Levies" rather than "Long Service Leave Levy" and imposes both the building and construction industry training levy and the long service leave levy as separate levies under section 66.

Notification of building and construction work (section 67)

Clause 17 prescribes that the notification of any impending leviable building or construction work must be given within set timelines if a development permit is required under the *Integrated Planning Act 1997* or an approval required under the *Plumbing and Drainage Act 2000* or before work starts. Previously no timelines were prescribed. This provision will assist in the enforcement of compliance.

This provision also prescribes that any increase greater than \$50,000 in the cost of previously notified work must be notified and the additional levy paid to the authority within 30 days of completion of the work. A penalty is prescribed for failing to comply.

Deciding who is a person for whom work is to be done or was to be done (section 68(A))

Clause 18 adds a provision – section 68(A)(6) – requiring a person to comply with any court order imposed in section 68(A)(5), unless they have a reasonable excuse and a penalty is prescribed for failing to comply.

Previously persons have relied on the difficulty of enforcement through the absence of any penalty.

Rate of levy (section 72)

Clause 19 provides for the rates of both the long service leave levy and the new training levy to be prescribed by a regulation.

Liability for levy (section 74)

Clause 20 prescribes a specific reference to the *Plumbing and Drainage Act 2000* regarding the payment of the required levy for building and construction work. Previously only the *Integrated Planning Act 1997* was referenced. As approvals for leviable plumbing and drainage work are applied for under both the *Integrated Planning Act 1997* and the *Plumbing and Drainage Act 2000*, depending on the nature of the work, this provision will enhance compliance by capturing all such work with local authorities and private certifiers needing to sight evidence of payment prior to the issuing of a development permit or approval.

When is levy payable (section 75)

Clause 21 determines that the levy must be paid before either a development permit is given under the *Integrated Planning Act 1997* or an approval given under the *Plumbing and Drainage Act 2000* or before the work is started. Previously only the *Integrated Planning Act 1997* was referenced.

Also, any ambiguity regarding timeframes for payment of the levy when an approval or permit are not required is eliminated by separating the two possible timeframes – either prior to commencement of work or a later time permitted by the authority – into separate sub sections.

Duty of assessment manager to sight approved form (section 77)

Clause 22 provides a reference to work approved under the *Plumbing and Drainage Act 2000* as in the previous two clauses. It also clarifies that the development permit or approval must not be given unless the relevant assessment manager or local authority has sighted an approved form which clearly shows either the payment of the levy or an instalment payment or an exemption from payment of the levy. A penalty is prescribed for failure to comply with these provisions.

This clause also provides for the assessment manager or local authority to take account of written advice from the authority before issuing the approval or permit in instances where the approval form has been lost or is unable to be produced.

Voluntary performance of building and construction work (section 79)

Clause 23 provides for an exemption from payment of the levy not only where the voluntary component of building and construction work to be carried out by or for an entity that is a non profit organization but also where the authority is satisfied that the work is for charitable purposes. This provision will enable relief to be given in deserving cases where the work is not necessarily for a non profit organization but where entities who normally work for profit are contributing work and/or labour to a charitable cause.

Additional provisions about levy (section 80)

Clause 24 permits the authority to issue a notice seeking further information in cases where the authority knows or reasonably suspects that building and construction work has been undertaken without the appropriate levy having been paid.

This amendment will enhance compliance mechanisms and ensure payment on all work that has been undertaken particularly in cases where the levy payer refuses to co-operate by providing information or documents concerning a particular project or where additional costs are imposed for non-compliance.

It also adds a provision – section 80(5) – requiring a person to comply with any court order imposed under section 80(4) unless the person has a reasonable excuse and a penalty is imposed for failure to comply.

Previously persons have relied on the difficulty of enforcement through the absence of any penalty.

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

Clause 25 specifies the deletion of the words “except for the purpose of calculating the amount of interest payable under subsection (1)” which removes any confusion regarding the concept of compound interest from section 84(2). This clause clarifies that any interest imposed forms part of the unpaid levy amount and any amount due in respect of long service leave levy and not paid at or before the time payment is due will attract compound interest at the rate prescribed under a regulation.

Part 10 Miscellaneous

Arrangements with other entities (section 91A)

Clause 26 provides the authority with the ability to enter into reciprocal arrangements with bodies or organisations that provide for making payments of long service leave or recognition of service of persons engaged in the building and construction industry within Queensland. This provision will facilitate arrangements where, for example, recognition of service other than that recorded on the authority’s register of workers may be necessary.

Proceedings for offences (section 105)

Clause 27 adds a new provision under section 105, making it clear that a provision in any part of the Act providing for an offence for failing to comply with a court order does not limit the power of the court to pursue punishment for contempt.

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

Clause 28 provides transitory arrangements for eligible workers and employers. It ensures that workers who were eligible workers immediately prior to 1 July 2005 will not lose their eligibility status whilst continuing in the same employment from 1 July 2005 (section 120).

It also ensures that the provisions of section 46, as in force immediately prior to the amendment taking effect on 1 July 2005, apply to any notice forwarded to the authority by an employer prior to 1 July 2005 but not received until after that date (section 121).

Schedule Dictionary

Clause 29 amends the Dictionary to include “building and construction training levy” and expands on the meaning of “levy”.

“Building and construction training levy” means a levy imposed under Part 8 but also clarifies that it includes any additional levies imposed under section 80 and any compound interest imposed under section 84.

The meaning of “levy” has been changed to cover both the new building and construction training levy and the long service leave levy.

Schedule Minor amendments section 3

Clause 30 provides for minor amendments to sections of the existing *Building and Construction Industry (Portable Long Service Leave) Act 1991 Act* relating mainly to section numbering, the inclusion of cross referencing and the omission/insertion of appropriate phrasing.