



Queensland

Building and Construction Industry (Portable Long Service Leave) Act 1991

Building and Construction Industry (Portable Long Service Leave) Regulation 2013

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Building and Construction Industry (Portable Long Service Leave) Regulation 2013

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Building and Construction Industry (Portable Long Service Leave) Regulation 2013

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*.

1A Definitions

The dictionary in schedule 1 defines particular words used in this regulation.

Part 2 Prescribed matters—general

2 Authority's trading name—Act, s 8

The authority's trading name is 'QLEAVE'.

3 Fund for building and construction industry training levy payments—Act, s 33

For section 33 of the Act, the fund is the Building and Construction Industry Training Fund (Qld).

4 Certificate of service—Act, s 47

- (1) This section states requirements for giving the authority a certificate of service for a worker under section 47(1)(a) of the Act.

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- (2) If the worker is engaged as at 30 June in a financial year, a certificate for the financial year must be given within 1 month after that day.
- (3) If the worker stops work before 30 June in a financial year, a certificate for the financial year must be given within 1 month after the worker stops work.
- (4) A certificate of service given under subsection (3) is for the period—
 - (a) starting on the last 1 July before the worker stops work; and
 - (b) ending on the day the worker stops work.

Part 3 Levies

5 Building and construction work for which levy is not payable—Act, s 70

- (1) For section 70(2) of the Act, levy is not payable for building and construction work if the cost of the work is less than \$150,000.

Note—

Under section 73(1) of the Act, the cost of building and construction work is exclusive of GST.

- (2) Also, levy is not payable for building and construction work to be performed for a prescribed entity by persons engaged under a contract of service with the entity (*contract persons*).
- (3) However, if persons other than contract persons perform building and construction work for the prescribed entity, levy is payable for the percentage of the cost of the building and construction work not performed by contract persons.
- (4) Also, work health and safety levy is not payable for building and construction work at—

-
- (a) a coal mine to which the *Coal Mining Safety and Health Act 1999* applies; or
 - (b) a mine to which the *Mining and Quarrying Safety and Health Act 1999* applies; or
 - (c) an operating plant, within the meaning of the *Petroleum and Gas (Production and Safety) Act 2004*, on land the subject of—
 - (i) a 1923 Act petroleum tenure under the *Petroleum Act 1923*; or
 - (ii) a petroleum authority under the *Petroleum and Gas (Production and Safety) Act 2004*; or
 - (iii) a GHG authority under the *Greenhouse Gas Storage Act 2009*; or
 - (d) a facility or plant used for drilling or drilling related purposes in geothermal exploration.
- (5) In addition, the following levies are not payable for building and construction work that is also resources operational work—
- (a) building and construction industry training levy;
 - (b) long service leave levy.
- (6) In this section—
- geothermal exploration*** see the *Geothermal Energy Act 2010*, section 13.
- prescribed entity*** means—
- (a) a government entity; or
 - (b) a local government.

6 Percentages for levy—Act, s 72

For section 72 of the Act, the percentages are—

- (a) for the building and construction industry training levy—0.1%; and

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- (b) for the long service leave levy—0.35%; and
- (c) for the work health and safety levy—0.125%.

7 **Cost of work—Act, s 76**

For section 76(3) of the Act, the cost is \$150,000.

Note—

Under section 73(1) of the Act, the cost of building and construction work is exclusive of GST.

8 **Rate of remuneration payable to assessment manager—Act, s 77**

- (1) For section 77(3) of the Act, the rate for each approved form or written advice seen is—
 - (a) \$4.50; or
 - (b) the higher amount worked out under subsections (2) to (4).

Note—

From and including 1 January 2014 the rate is \$4.50.

- (2) The rate is adjusted each year on 1 July using the formula—

$$\frac{A \times B}{C}$$

where—

A is the rate immediately before 1 July in the year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the corresponding quarter in the previous year.

- (3) However, if in a particular year the adjustment of the rate under subsection (2) would reduce the amount of the rate, the rate must not be adjusted in that year.
- (4) In this section—

CPI means the all groups consumer price index for Brisbane published by the Australian Statistician.

9 Amount for additional levy—Act, s 80

For section 80(6)(b) of the Act, the amount is \$20,000 (excluding GST).

10 Additional levy—Act, s 80

- (1) For section 80(8) of the Act, the additional levy is the total of the amounts worked out by applying the percentages mentioned in section 6 to the difference between—
 - (a) the cost of the building and construction work for which levy has been paid; and
 - (b) the cost of the work for which levy is payable.
- (2) However, if the levy paid was an amount worked out by applying percentages (the *applicable percentages*) other than the percentages mentioned in section 6, the amount of the additional levy must be worked out by applying the applicable percentages.
- (3) The additional levy must be rounded to the nearest dollar, with 50c to be rounded downwards.

11 Amount for refund of levy—Act, s 81

For section 81(2)(c) of the Act, the amount is \$20,000 (excluding GST).

12 Refund of levy—Act, s 81

- (1) For section 81(2) of the Act, the amount to be refunded is the total of the amounts worked out by applying the percentages mentioned in section 6 to the difference between—
 - (a) the cost of the building and construction work for which levy has been paid; and

[s 13]

- (b) the cost of the building and construction work when the refund is applied for.
- (2) However, if the levy paid was an amount worked out by applying percentages (the *applicable percentages*) other than the percentages mentioned in section 6, the amount to be refunded must be worked out by applying the applicable percentages.
- (3) The amount to be refunded must be rounded to the nearest dollar, with 50c to be rounded downwards.

13 Amount for approval to pay levy by instalments—Act, s 82

For section 82(1)(a) of the Act, the amount is \$10m (excluding GST).

14 Interest rate—Act, s 84(1)

For section 84(1) of the Act, interest accrues daily at the prescribed rate, within the meaning of the *Taxation Administration Act 2001*, for unpaid tax interest.

Part 4 Appeals

15 Appeal to industrial magistrate—Act, s 88

For section 88(3) of the Act, the *Industrial Relations Act 1999* applies to an appeal to an industrial magistrate.

Note—

See the *Industrial Relations (Tribunals) Rules 2011*, parts 2 and 5.

Part 5 Declarations

16 **Declaration of reciprocating States or Territories and of corresponding laws—Act, s 91**

- (1) For section 91(1)(a) of the Act, each of the following is a reciprocating State or Territory—
 - (a) Australian Capital Territory;
 - (b) New South Wales;
 - (c) Northern Territory;
 - (d) South Australia;
 - (e) Tasmania;
 - (f) Victoria;
 - (g) Western Australia.
- (2) For section 91(1)(b) of the Act, each of the following is a corresponding law—
 - (a) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
 - (b) *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (c) *Construction Industry Long Service Leave and Benefits Act* (NT);
 - (d) *Construction Industry Long Service Leave Act 1987* (SA);
 - (e) *Construction Industry (Long Service) Act 1997* (Tas);
 - (f) *Construction Industry Long Service Leave Act 1997* (Vic);
 - (g) *Construction Industry Portable Paid Long Service Leave Act 1985* (WA).

Part 7 Repeal and transitional provisions

Division 1 Repeal

18 Repeal

The Building and Construction Industry (Portable Long Service Leave) Regulation 2002, SL No. 144 is repealed.

Division 2 Transitional provision for 2013 SL No. 38

19 Transitional provision for Building and Construction Industry (Portable Long Service Leave) Regulation 2013

(1) An appeal that has been started but not finished before the commencement of this section may be finalised under the repealed regulation as if that regulation had not been repealed.

(2) In this section—

repealed regulation means the repealed *Building and Construction Industry (Portable Long Service Leave) Regulation 2002*.

Division 3 Transitional provisions for Building and Construction Industry (Portable Long Service Leave) Amendment Regulation (No. 1) 2014

20 Definition for div 3

In this division—

commencement means the commencement of this division.

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21 Refund of levy applied for immediately before commencement

- (1) This section applies to an application under section 81(2) of the Act made, but not decided before the commencement.
- (2) Section 11 as in force immediately before the commencement continues to apply in relation to the application.

22 Levy not fully paid immediately before commencement

- (1) This section applies if—
 - (a) before the commencement, a person was served with a notice of assessment under section 85 of the Act for building and construction work the cost of which is more than \$5bn; and
 - (b) immediately before the commencement—
 - (i) levy due under the Act in relation to the building and construction work had not been paid in full; and
 - (ii) more than \$1bn of the cost of the building and construction work assessed had not been completed.
- (2) Despite the notice of assessment, the amount of levy due under the Act for the relevant portion is taken to be the amount of levy that would be due for the relevant portion if it were calculated by applying section 6, as in force on the commencement.
- (3) Nothing in this section affects the notice of assessment to the extent it relates to levy for the part of the cost of the building and construction work that is not the relevant portion.
- (4) In this section—

relevant portion means the part of the cost of the building and construction work mentioned in subsection (1)(a) that—

 - (a) is not more than \$5bn; and

- (b) is for work that, immediately before the commencement, was uncompleted.

Note—

Under section 73(1) of the Act, the cost of building and construction work is exclusive of GST.

Division 4 Transitional provisions for Building and Construction Industry (Portable Long Service Leave) (Levy Changes) Amendment Regulation 2020

23 Definitions for division

In this division—

amendment regulation means the *Building and Construction Industry (Portable Long Service Leave) (Levy Changes) Amendment Regulation 2020*.

former, in relation to a provision, means the provision as in force from time to time before it was amended by the amendment regulation.

24 Levy for building and construction work notified before commencement

- (1) This section applies to the levy payable for building and construction work if—
- (a) before the commencement, an approved form was filed under section 67(2) of the Act in relation to the work; and
 - (b) immediately before the commencement, the levy had not been paid in full.
- (2) Former section 6 and former schedule 1 continue to apply for calculating the levy as if the amendment regulation had not commenced.

[s 25]

25 Additional amount of levy for building and construction work notified before commencement

- (1) This section applies to the additional amount of levy payable for building and construction work if—
 - (a) before the commencement, an approved form was filed under section 67(2) of the Act in relation to the work; and
 - (b) after the commencement, notice is given to the authority under section 67(4) of the Act in relation to the work.
- (2) Former section 6 and former schedule 1 continue to apply for calculating the additional amount of levy as if the amendment regulation had not commenced.

Schedule 1 Dictionary

section 1A

mining means the extraction of substances, including any of the following, from air, earth, sea or seabed—

- (a) gemstone, salt or phosphate;
- (b) hydrocarbon;
- (c) metal, mineral or ore;
- (d) mineral sand;
- (e) quarried stone including limestone, marble or sandstone;
- (f) uranium and other radioactive substances;
- (g) a derivative of a substance mentioned in paragraphs (a) to (f).

mining tenement means an authority, claim, lease, licence, permit or other tenure under any of the following Acts—

- (a) *Alcan Queensland Pty. Limited Agreement Act 1965*;
- (b) *Central Queensland Coal Associates Agreement Act 1968*;
- (c) *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984*;
- (d) *Central Queensland Coal Associates Agreement (Amendment) Act 1986*;
- (e) *Central Queensland Coal Associates Agreement Amendment Act 1989*;
- (f) *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*;
- (g) *Geothermal Energy Act 2010*;

- (h) *Greenhouse Gas Storage Act 2009*;
- (i) *Mineral Resources Act 1989*;
- (j) *Mount Isa Mines Limited Agreement Act 1985*;
- (k) *Petroleum Act 1923*;
- (l) *Petroleum and Gas (Production and Safety) Act 2004*;
- (m) *Queensland Nickel Agreement Act 1970*;
- (n) *Queensland Nickel Agreement Act 1988*;
- (o) *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

Examples—

- an authority under the *Petroleum and Gas (Production and Safety) Act 2004*
- an exploration permit, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*
- a GHG authority under the *Greenhouse Gas Storage Act 2009*

mobile plant includes a dragline.

resources operation means—

- (a) mining under a mining tenement; or
- (b) separating, producing, gathering, storing, processing, refining or smelting a substance that is the product of mining (whether or not under a mining tenement); or
- (c) treatment operations undertaken in relation to a substance that is the product of mining (whether or not under a mining tenement).

resources operational work—

- 1 *Resources operational work* means the conduct of a resources operation.
- 2 *Resources operational work* also means activities that are ancillary to, or undertaken in connection with, a resources operation including, for example—
 - (a) erecting, below or above a mine portal of an underground mine, a conveyor belt to be used substantially below the portal; or

- (b) mining development activities below or substantially below the mine portal of an underground mine; or
- (c) purchasing, mobilising and constructing mobile plant or equipment, other than a dragline, for a resources operation; or
- (d) maintaining or repairing mobile plant, including a shutdown; or
- (e) ancillary or incidental generation, supply or transmission of electric power or steam for resources operations; or
- (f) loading or handling of bulk materials at a wharf; or
- (g) installing wells, gathering lines and associated infrastructure to extract hydrocarbons and by-products, upstream of, but not in or on, a processing facility; or
- (h) maintaining or extending haul roads used for a resources operation under a mining tenement; or
- (i) maintaining or repairing fixed facilities, plant and equipment, other than a shutdown; or
- (j) prospecting or exploring activities undertaken in connection with mining under a mining tenement; or
- (k) work, other than the construction of roads, to allow land access on or to a place where the following are being conducted—
 - (i) a resources operation;
 - (ii) activities mentioned in paragraph (j); or
- (l) land clearing or rehabilitation work undertaken in connection with—
 - (i) activities mentioned in paragraph (j); or
 - (ii) mining under a mining tenement.

Schedule 1

- 3 The following the activities are not *resources operational work* other than to the extent they are mentioned in paragraph 2(a) to (l)—
- (a) erecting a conveyor belt to be used substantially on the surface of land; or
 - (b) constructing a dragline, or the complete deconstruction and reconstruction of a dragline in a new location if it has not moved under its own power; or
 - (c) constructing, deconstructing or reconstructing fixed plant or equipment; or
 - (d) a shutdown of fixed plant or equipment.

shutdown, in relation to facilities, plant or equipment, means carrying out substantial maintenance or repair work on the facilities, plant or equipment, that results in the cessation of the conduct of a resources operation if—

- (a) the cessation is for at least 30 days; and
- (b) the entire period of cessation is reasonably required for the carrying out of maintenance or repairs.