

Building and Construction Industry (Portable Long Service Leave) Regulation 2024¹

Explanatory notes for SL 2024 No. 162

made under the

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

Community Services Industry (Portable Long Service Leave) Act 2020

Contract Cleaning Industry (Portable Long Service Leave) Act 2005

Industrial Relations Act 2016

General Outline

Short title

Building and Construction Industry (Portable Long Service Leave) Regulation 2024

Authorising law

Section 112(1) of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 125(1) of the *Community Services Industry (Portable Long Service Leave) Act 2020*, section 150(1) of the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* and sections 551(1) and 990(1) of the *Industrial Relations Act 2016*.

Policy objectives and the reasons for them

The objective of the Building and Construction Industry (Portable Long Service Leave) Regulation 2024 (the Regulation) is to remake the Building and Construction Industry (Portable Long Service Leave) Regulation 2013 (the BCI Regulation), with amendments that have arisen from its sunset review.

The BCI Regulation is subordinate legislation made under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (the BCI Act). The BCI Regulation includes provisions authorised by the BCI Act that are required to ensure the effective ongoing operation of Queensland's building and construction industry portable long service leave scheme.

Section 54 of the *Statutory Instruments Act 1992* provides that subordinate legislation automatically expires every ten years unless action is taken to preserve it. The BCI Regulation was due to expire in 2023. However, a 12-month exemption extension was granted, and the BCI Regulation now expires on 31 August 2024.

The Office of Industrial Relations conducted a sunset review of the BCI Regulation in accordance with *The Queensland Government Better Regulation Policy*. The sunset review confirmed that provisions within the BCI Regulation are still necessary and appropriate for the continued operation of the BCI Act and its portable long service leave scheme.

The sunset review also identified that minor changes are necessary to ensure the BCI Regulation operates effectively, as well as changes in response to stakeholder feedback. The BCI Regulation is to be remade as the Building and Construction Industry (Portable Long Service Leave) Regulation 2024 (the Regulation).

During the sunset review, minor amendments were also identified to be made to other subordinate legislation to update references to other legislation and these are included in the Regulation. This includes to the Industrial Relations (Tribunals) Rules 2011 (IR Rules), the Community Services Industry (Portable Long Service Leave) Regulation 2020 (CSI Regulation) and the Contract Cleaning Industry (Portable Long Service Leave) Regulation 2015 (CCI Regulation).

Achievement of policy objectives

The Regulation achieves its policy objectives by remaking the current regulation, with minor amendments, to ensure it continues to operate effectively. The minor changes to the BCI Regulation include updated references to current legislation, updated transitional provisions, and updated wording to reflect current drafting practice.

Stakeholder feedback received during the sunset review identified that it was necessary to include a definition of the Wage Price Index (WPI) utilising existing Australian Bureau of Statistics (ABS) data to the Regulation to ensure the continued effective operation of sections 59A and 62AA of the BCI Act.

Section 59A of the BCI Act sets out the maximum ordinary pay for a normal working week for determining how much long service leave eligible workers will be paid. Section 62AA of the BCI Act is a mirror provision of section 59A for determining the maximum ordinary

pay for a normal week that relates to the reimbursement to employers for benefits provided to workers.

Both section 59A and 62AA of the BCI Act define WPI as Queensland's WPI for the "building and construction industry available quarterly from the Australian Bureau of Statistics or, if the index ceases to be published, another similar index prescribed under regulation."

Currently, the ABS does not publish a Queensland WPI for the building and construction industry. The National Construction Industry WPI published by the ABS is a comparable index and will be prescribed for these purposes in the Regulation.

The Regulation will also enable minor amendments to the IR Rules, the CSI Regulation and the CCI Regulation to update references to other legislation.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the BCI Act as it includes provisions authorised by the BCI Act that are required to ensure the effective ongoing operation of Queensland's building and construction industry portable long service leave scheme.

The minor amendment to the IR Rules is consistent with the policy objectives of the *Industrial Relations Act 2016* (IR Act) as the updated reference to legislation supports the functions and powers of the Industrial Court and the Queensland Industrial Relations Commission.

The minor amendments made to the CSI Regulation and CCI Regulation, which also update references to current legislation, are consistent with the main purpose of their respective Acts as it supports the effective delivery of their portable long service leave schemes.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives as the BCI Regulation needs to be remade in the proposed form to ensure the effective ongoing operation of Queensland's building and construction industry portable long service leave scheme and the BCI Act.

The Regulation is not being remade exactly in its current form as some changes were required in response to feedback from stakeholders and for the Regulation to operate effectively.

Benefits and costs of implementation

Implementation of the Regulation is not anticipated to bring any additional costs for government.

Consistency with fundamental legislative principles

This Regulation is consistent with fundamental legislative principles.

Consultation

In accordance with *The Queensland Government Better Regulation Policy* consultation was undertaken and occurred in the forms of public consultation, targeted consultation with stakeholders and with government agencies.

On 7 August 2023, a consultation paper was published and distributed to stakeholders, informing about the sunset review of the BCI Regulation. The consultation paper provided an overview of the coverage of the BCI Regulation and submissions were invited from stakeholders and the public, during the 28-day consultation period.

Six submissions were received and within the scope of the review did not indicate that substantial changes were necessary for the BCI Regulation to continue meeting its objectives. Stakeholder feedback included the inclusion of the definition of WPI for the operation of section 59A of the BCI Act.

On 2 July 2024, a further consultation paper and consultation draft of the Amendment Regulation, was distributed to stakeholders for a 10-day consultation period. The further consultation paper advised of the proposed amendments to the BCI Regulation, including the definition of WPI. Two submissions were received from stakeholders, and within the scope of the sunset review, proposed that the definition of WPI be extended to also apply to section 62AA of the BCI Act.

Feedback received from stakeholders during consultation provided general support for the BCI Regulation to be remade largely in its current form with the minor technical updates noted in these explanatory notes.

QLeave, Queensland's portable long service leave authority, was consulted and its feedback has been included in the remake of the BCI Regulation.

Queensland Treasury and the Department of Premier and Cabinet were also consulted on the sunset review of the BCI Regulation and support the amendments.

As required by section 551(2) of the IR Act, the Rules Committee have been consulted on the amendments to the IR Rules. The Rules Committee support the proposed amendments.