



Queensland

Building and Construction Industry (Portable Long Service Leave) Amendment Regulation (No. 1) 2004

Regulatory Impact Statement for SL 2004 No. 220

made under the

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

1 Title

Proposed Amendment to the Building and Construction Industry (Portable Long Service Leave) Regulation 2002

2 Background

The Queensland Government proposes to amend the Building and Construction Industry (Portable Long Service Leave) Regulation 2002 to raise the levy prescribed by section 6 of this regulation from 0.075% to 0.175% (including a 0.05% industry training contribution). This increase, based on independent actuarial advice, is considered necessary to ensure the long term viability of the Building and Construction Industry (Portable Long Service Leave) Scheme (the Scheme).

QLeave administers the Scheme, which provides long service leave benefits to building and construction industry workers. Such benefits are for service to the industry rather than to one employer. The Scheme recognises that because of the short term project nature of the industry, relatively few workers would access long service leave benefits enjoyed by workers in other industries. QLeave also collects and provides funds for building and construction industry training.

The Scheme is entirely self-funded through a levy on all building and construction work costing \$80,000 or more. The levy rate set by the regulation currently stands at 0.075%. Under the terms of the Building and Construction Industry (Portable Long Service Leave) Act 1991, 0.05% of the 0.075% collected by the long service leave levy is provided to the Building and Construction Industry Training Fund (Qld) (BCITF). Effectively, this leaves 0.025% with which to fund the Long Service Leave Scheme, including operating expenses.

As well as collecting portable long service leave levy, QLeave is also the collection agent for the Workplace Health & Safety Notification Fee, which is currently set at 0.125%. Therefore, in total, QLeave collects \$2.00 for every \$1,000 of work; of this \$1.25 is forwarded to Workplace Health & Safety Queensland, \$0.50 is forwarded to the BCITF for the training grant, and \$0.25 is retained for portable long service leave levy.

At the inception of the Scheme in July 1992, the Scheme levy rate was set at 0.5% and has been reduced on several occasions on independent Actuarial advice until the most recent reduction from 0.1% to 0.075% on 1 January 1999. At that time, the Training Fund contribution was also introduced on the premise that the Scheme's then large reserve funds pool in comparison to its long term liabilities could withstand the low contribution rate and the Training Fund grant for several years.

The reserve funds pool had increased because during the initial ten years of the Scheme's operation, there were relatively few outgoings until it reached "maturity" in 2002. From that time an increasing proportion of members are becoming eligible to take long service leave after accruing the equivalent of ten full years' service in the industry.

The biennial Actuarial Valuation undertaken as at 30 June 2001 indicated that the Scheme's then current surplus was estimated to be \$103.3M. The surplus could be utilised for several years to subsidise the 0.075% levy rate but that the long term sustainable rate was then estimated to be 0.14%. However, the independent Actuarial Valuation completed in February 2004 assessing the Scheme's position as at 30 June 2003, has found that the surplus had been reduced to an estimated \$23.2M which could support the reduced levy rate for only one to two years.

The Actuary advises that the principal factors affecting the Scheme's position have been:

- the negative rates of returns on investments over two years between assessments;

- The significant increase in Scheme membership due to the boom in building activity over the past two years increasing long term liability; and
- The loss of revenue because of the levy rate being maintained at less than the long term sustainable rate.

The Actuary recommends that the necessary steps now be taken to increase the levy rate received by the Scheme in the near future. The best estimate of the long term levy rate, including the Training Fund grant, is now 0.18% but that some variation around that rate is possible in terms of funding the benefits of the Scheme over time.

Given the existing contribution rate of 0.125% for the WHSQ Fee it may be administratively easier for the industry if the Portable Long Service Leave levy rate be “rounded” at 0.175%.

3 Authorising law

This legislation is authorised under the Building and Construction Industry (Portable Long Service Leave) Act 1991 (the Act).

4 Policy objectives

The primary aim of the proposed amendment to the regulation is to ensure the long term viability of the Scheme to ensure that it can meet its liability to pay long service leave benefits for workers, and thereby continue to fulfil the function for which it was established.

5 Legislative intent

The intended effect of the proposed amendment to the regulation is to protect the current rights of the Scheme members to be paid portable long service leave benefits, by ensuring that the Scheme has fully funded liabilities in the future.

The impact of the increase in the levy percentage rate will be payment of a rate of 0.175% for long service leave levy rather than the current rate of 0.075% (including the 0.05% training fund contribution). The liability of persons required to pay the levy under section 74 of the Act, together with the manner in which those persons are required to pay the levy, will remain unchanged.

The stakeholders most likely to be affected are those persons required to pay the levy pursuant to section 74 of the Act. In most cases, this will be the applicant under a development application, or the person for whom the work is to be done. In the case of the Commonwealth, the levy is to be paid by the principal contractor engaged to carry out the work, and in the case of a state or local government entity, that entity is liable for payment of the levy.

The increase in levy will entail that an amount of \$1.75 in every \$1,000 of leviable building and construction work performed will be payable, compared with the previous payment of \$0.75 per every \$1,000 of leviable building and construction work.

The proposed amount of the levy increase is specifically for the amount required to fund the scheme in the long term according to independent actuarial estimates. QLeave is mindful of operating costs, and has endeavoured to ensure that operating costs are kept to a minimum each year. Under the circumstances, it is considered that the amount of the increase is reasonable and appropriate to ensure the long term viability of the scheme.

6 Consistency with authorising law

The Building and Construction Industry (Portable Long Service Leave) Act 1991 was established to provide a scheme under which portable long service leave benefits may be payable to workers in the building and construction industry in Queensland. As the Scheme is entirely self funded, the percentage rate of the levy is required to be set at a rate that is able to sustain the long term viability of the Scheme.

The proposed amendment is consistent with that objective.

7 Consistency with other legislation

The proposed amendment is not inconsistent with any other legislation.

8 Options and alternatives

As the Scheme is fully self funded, it is not foreseeable that funds may be obtained from Treasury to meet increased long term liabilities. Realistically, there are only two options available for consideration. The first option is to do nothing and retain the levy at its current unsustainable

rate. The second option is to raise the levy to a level that can sustain the Scheme in the long term.

8.1 Do nothing and retain the current rate

Based on actuarial advice, the likely consequences of retaining the current levy rate are that the Scheme will have unfunded liabilities. Should this occur, it is highly likely that the Scheme will dissolve. As the Scheme has become an integral part of the building and construction industry in Queensland over the past twelve years, it is imperative that the Scheme be retained in the long term.

8.2 Raise the levy rate to a sustainable long-term rate

By raising the levy rate to the sustainable level of 0.175%, the Scheme will be able to meet its future liabilities, thus ensuring the long term viability of the Scheme for the benefit of workers in the building and construction industry in Queensland.

Consultation has been undertaken with QLeave Board members who represent major industry and employer stakeholders, such as Queensland Master Builders Association, Housing Industry Association, Civil Contractors Federation, the CFMEU, AWU and CEPU Plumbing Division. All QLeave Board members accept that the levy rate must be raised to ensure the continued viability of the Scheme.

9 Cost-benefit assessment

On an individual project basis, the cost of the levy rate increase to individual levy payers and the greater industry will be significantly lower than the benefit that the industry will gain. On an average cost of project of \$200,000, the portable long service leave levy collected by QLeave will increase from \$150 to \$350, including a \$100 contribution to the training fund. Levy revenue is combined with returns on funds invested to meet QLeave's actuarially assessed current and long term liabilities.

The introduction of the Scheme in Queensland in 1992 permitted workers in the building and construction industry to receive portable long service leave benefits for the first time. The Scheme recognises their service to the industry, and also recognises the often temporary and transient nature of building and construction work. Currently, the Scheme has approximately

150,000 workers and 11,100 employers registered. The Scheme is a vital part of the building and construction industry in Queensland. It enables industry workers to receive paid long service leave benefits, similar to those benefits enjoyed by workers in other sectors. The Scheme also enables employers in certain circumstances to receive a reimbursement of monies paid to workers for long service leave benefits. QLeave imposes no charge on either workers or employers for membership of the Scheme. In the twelve years since the introduction of the Scheme, over 12,200 benefit claims have been paid to registered Scheme workers and employers, totalling almost \$50 million. Of that amount, \$10.7 million was paid in the 2002-2003 financial year, compared with \$4.9 million in 1999-2000.

QLeave's liabilities are higher than the amount actually paid each year because some workers choose to defer their long service leave claims to a more convenient future date.

The current levy rate of 0.075% is lower than the long term sustainable rate for the Scheme. This artificially low rate was set in 1999 to allow the large accumulated surplus to subsidise the levy rate for a number of years. On actuarial advice, it is now time to revert to a sustainable rate of 0.175%. Should the levy rate not be raised to 0.175%, the Scheme faces the possibility of having unfunded liabilities, being unable to meet its liability to pay long service leave benefits to workers in the building and construction industry in Queensland, and thus being unable to fulfil the function for which it was established. Having unfunded liabilities could result in the dissolution of the Scheme.

Should the Scheme be dissolved, workers in the building and construction industry will no longer be able to accrue portable long service leave credits, and thus will not be paid benefits unless they remain in continuous service to one employer for the requisite long service leave accumulation periods.

The building and construction industry as a whole will be affected in a positive manner by the increase in the levy percentage rate, as it will ensure the long term continuation and viability of the Scheme. The ongoing success of the Scheme allows its members to accumulate and realise the benefits of their long term contribution to the building and construction industry in Queensland.

The whole Queensland community also benefits from the Scheme. One of the principal reasons for the establishment of the Scheme in 1992 was to assist in ensuring the retention of skilled workers in the building and construction industry, rather than having them leave the industry seeking benefits of more stable work patterns in other sectors. Queensland's

economy has enjoyed strong growth over recent years. Queensland's population rises by approximately 2% per annum, which in turn drives the demand for the new housing, housing renovation and commercial markets. Major Commonwealth and State Government infrastructure programs planned for the medium and long term will sustain the requirement for skilled workers in the building and construction industry. The retention of workers, their experience and their skills within the Queensland industry is an important factor in stabilising the industry and cost structures for the community, and the Queensland economy as a whole.

Using the 2002-2003 financial year as a guide, and excluding the training fund contribution, the increased levy rate would have collected \$22.085 million, in comparison to the \$4.417 million actually collected under the current rate. This represents an increase of \$17.668 million.

The combined additional revenue from the increased levy and returns on QLeave's investments have been estimated by the actuary to be sufficient to cover the Scheme's increasing long term member benefit liabilities. As a guide, the actuarial assessment of all member benefit liabilities as at 30 June 2001 was \$76.4 million. As at 30 June 2004, the assessment of liabilities had increased to \$123.8 million.

The 2002-2003 financial year figures demonstrated that 67% of the total levies received for the year were received for housing projects costing between \$80,000 and \$200,000. Projects costing between \$200,000 and \$500,000 comprise 24% of all levies collected, with the remaining 9% comprising projects \$500,000 and over. While the 'building boom' continues in Queensland, the greatest impact of the increase in levy is expected to be in the housing sector. QLeave is mindful of the issue of housing affordability and the increased costs in home building in recent years. However, taking into account that the bulk of housing projects in Queensland are those valued between \$80,000 and \$200,000, the increase per house project will range between \$80 and \$200 per project. This amount is not considered to be unreasonably burdensome in the overall cost of housing projects, particularly when compared with the benefits the scheme will gain across the whole industry.

QLeave anticipates that there will be no significant adverse employment and skills development impact from the proposed increase in levy rate. The building and construction industry employs approximately 150,000 workers in Queensland, and there are currently acute labour shortages because of the existing high demand in the building and construction sector. The effect of the proposed 0.05% rise (or 0.1% including the 0.05%

training contribution) is not expected to have any appreciable effect on demand for building development and hence, labour demand.

10 Fundamental legislative principles

The proposed amendment raises no issues of inconsistency with fundamental legislative principles.

11 Conclusion

The Act has established a framework whereby portable long service leave levy is collected to fund the Scheme. The continuing success and long term viability of the Scheme depends upon sufficient monies being collected to fund both its current and long term liabilities. The actuarial assessment of the Scheme's current position reveals that the artificially low levy rate of 0.075% cannot be sustained for more than two years, and that the levy must be raised to a sustainable level to ensure the continuity of the Scheme in the future. The facts and options outlined in this RIS demonstrate that the only viable option to ensure the long term future of the Scheme is to raise the levy rate to the recommended rate of 0.175%.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Industrial Relations.