

Queensland



Subordinate Legislation 2002 No. 144

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

BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) REGULATION 2002

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PART 1—PRELIMINARY

1 Short title

This regulation may be cited as the *Building and Construction Industry (Portable Long Service Leave) Regulation 2002*.

PART 2—MATTERS OTHER THAN APPEALS

2 Declaration that persons are not eligible workers—Act, s 3A(3)(a)

Each of the following persons is not an eligible worker—

- (a) a person who meets the requirements under section 3A(1)(a) of the Act¹ for being an eligible worker and whose work is of a type covered by wage group C1, C2(a), C2(b), C3 or C4 of the Engineering Award—State;
- (b) a person who meets the requirements under section 3A(1)(b) of the Act for being an eligible worker and whose work would, if performed under a contract of employment, be of a type covered by wage group C1, C2(a), C2(b), C3 or C4 of the Engineering Award—State;
- (c) a person who meets the requirements under section 3A(1)(a) or (c) of the Act for being an eligible worker and who is employed by Mount Isa Mines Limited ACN 009 661 447;
- (d) a person who meets the requirements under section 3A(1) of the Act for being an eligible worker and whose contract of employment or subcontract is with—
 - (i) a local government; or
 - (ii) a government entity.

¹ Section 3A (Meaning of “eligible worker”) of the Act

3 Authority's trading name—Act, s 8

The trading name 'QLEAVE' is prescribed for the authority.

4 Funds for training—Act, s 33(4) and (5)

(1) The trustees of the Building and Construction Industry Training Fund (Qld) is prescribed under section 33(4)² of the Act as the entity to hold in trust the amount allocated under the section.

(2) The authority must pay the amount for a financial year to the trustees by quarterly advances.

(3) In working out the amount of a quarterly advance in a financial year—

- (a) the cost of building and construction work used to calculate the estimated levy revenue for the authority's annual budget for the financial year (the "**estimated cost of work**") is to be used; and
- (b) an adjustment for the previous quarter is to be made based on any difference between—
 - (i) the estimated cost of work apportioned to the previous quarter; and
 - (ii) the cost of the building and construction work attributable to the previous quarter, to which the percentage mentioned in section 33(2) of the Act is applied.

(4) A quarterly advance is to be paid within 30 days after the start of the quarter.

5 Certificate of service—Act, s 47

(1) This section states requirements for giving the authority and a worker a certificate of service for the worker under section 47(1)(a)³ of the Act.

(2) A certificate must be given in the approved form.

(3) If the worker is engaged as at 30 June in any financial year, a certificate must be given within 1 month after that day.

2 Section 33 (Funds for training) of the Act

3 Section 47 (Certificate of service to be supplied by employers) of the Act

(4) If the worker stops work before 30 June in any financial year, a certificate must be given within 1 month after the worker stopped work.

(5) A certificate of service given under subsection (3) is to be for the financial year ending on the relevant 30 June.

(6) A certificate of service given under subsection (4) is to be for the period—

- (a) starting on the last 1 July before the worker stopped work; and
- (b) ending on the day the worker stopped work.

6 Building and construction work for which no levy is payable—Act, s 70(2)

(1) Levy is not payable for building and construction work if the cost of the work is less than \$80 000.

(2) Levy is not payable for building and construction work, or a part of building and construction work, if—

- (a) the work is to be carried out for—
 - (i) a local government; or
 - (ii) a government entity; and
- (b) all the persons to be employed on site in performing the building and construction work, or a part of the building and construction work, are persons employed under a contract of employment with the local government or government entity.

7 Prescribed percentage for levy—Act, s 72

For section 72⁴ of the Act, the prescribed percentage is 0.075%.

8 Prescribed cost of work—Act, s 76(3)

For section 76(3)⁵ of the Act, the prescribed cost is \$80 000.

4 Section 72 (Rate of levy) of the Act

5 Section 76 (Government entity to notify authority of building and construction work) of the Act

9 Prescribed rate of remuneration payable to local government—Act, s 77(2)

(1) For section 77(2)⁶ of the Act, the prescribed rate for each approved form seen is—

- (a) \$1.70; or
- (b) a higher amount calculated under subsections (2) to (5).

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

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

(3) If, in a particular year, the adjustment of the prescribed rate would reduce the amount of the prescribed rate, the rate is not to be adjusted in that year.

(4) In applying the formula for a year—

“A” is the prescribed 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.

(5) In this section—

“CPI” means the all groups consumer price index for Brisbane published by the Australian statistician.

10 Prescribed amount for additional levy—Act, s 80(5)(b)

For section 80(5)(b)⁷ of the Act, the prescribed amount is \$20 000.

11 Additional levy—Act, s 80(7)

(1) For section 80(7) of the Act, the additional levy is 0.075% of the difference between the cost of the building and construction work for which levy has been paid and the cost of the work for which levy is payable.

⁶ Section 77 (Duty of assessment manager to sight approved form) of the Act

⁷ Section 80 (Additional provisions about levy) of the Act

(2) The additional levy must be rounded to the nearest dollar, with 50 c being rounded downwards.

12 Prescribed amount for refund of levy—Act, s 81(2)(c)

For section 81(2)(c)⁸ of the Act, the prescribed amount is \$20 000.

13 Refund of levy—Act, s 81(2)

(1) For section 81(2) of the Act, the amount to be refunded is 0.075% of the difference between—

- (a) the cost of the building and construction work for which levy has been paid; and
- (b) the cost of the building and construction work when the refund is applied for.

(2) However, if the levy was paid at a rate other than 0.075% of the cost of the building and construction work, the amount to be refunded is to be worked out at the other rate.

(3) The amount to be refunded must be rounded to the nearest dollar, with 50 c being rounded downwards.

14 Prescribed amount for approval to pay levy by instalments—Act, s 82(1)(a)

For section 82(1)(a)⁹ of the Act, the prescribed amount is \$1 000 000.

15 Prescribed interest rate—Act, s 84(1)

For section 84(1)¹⁰ of the Act, the prescribed rate is 2% a month or part of a month.

8 Section 81 (Refunds of levy) of the Act

9 Section 82 (Payment of levy by instalments) of the Act

10 Section 84 (Interest on, and extension of time for payment of, levy) of the Act

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

(1) Each of following States, in relation to which an agreement under section 90¹¹ of the Act is in force, is a reciprocating State—

- (a) Australian Capital Territory;
- (b) New South Wales;
- (c) South Australia;
- (d) Tasmania;
- (e) Victoria;
- (f) Western Australia.

(2) Each of the following is a corresponding law under the Act—

- (a) *Long Service Leave (Building and Construction Industry) Act 1981* (ACT);
- (b) *Building and Construction Industry Long Service Payments Act 1986* (NSW);
- (c) *Construction Industry Long Service Leave Act 1987* (SA);
- (d) *Construction Industry (Long Service) Act 1997* (Tas);
- (e) *Construction Industry Long Service Leave Act 1997* (Vic);
- (f) *Construction Industry Portable Paid Long Service Leave Act 1985* (WA).

17 Books, records and particulars—Act, s 92(1) and (2)

(1) The books and records about workers required to be kept under section 92(1)¹² of the Act are time sheets, attendance records or other records that show the worker's hours of work.

(2) For section 92(2) of the Act, the particulars are—

- (a) the full name, address and date of birth of each worker who is or was engaged; and

11 Section 90 (Arrangements with other States and with Territories) of the Act

12 Section 92 (Keeping, and inspection, of books and records) of the Act

- (b) the type of work performed by each worker; and
- (c) if the worker is a registered worker—the worker’s number in the register of workers; and
- (d) the name of any award under which the worker is, or was, engaged; and
- (e) the serial number of each certificate of service given to the worker under section 47(1)(a)¹³ of the Act; and
- (f) the periods, and the proportions of the periods, during which the worker performed building and construction work in Queensland.

PART 3—APPEALS

18 Application of pt 3

This part applies to an appeal to an industrial magistrate under section 88 of the Act.¹⁴

19 Starting appeal—Act, s 88(3)

(1) The appeal must be started by filing a notice of appeal in the approved form with the clerk of the court of the Magistrates Court nearest to the place where the appellant resides or carries on business.

(2) The notice of appeal must provide for the appellant to state—

- (a) the decision or other matter appealed against; and
- (b) the material facts relied on in support of the appeal; and
- (c) the relief sought.

(3) The clerk of the court must—

- (a) arrange with an industrial magistrate a return day and time for the appeal; and

13 Section 47 (Certificate of service to be supplied by employers) of the Act

14 Section 88 (Appeal to industrial magistrate) of the Act

(b) insert the return day and time in the notice.

(4) The return day must be at least 10 days after the day the notice is filed.

(5) The appellant must, after the clerk of the court has inserted the return day and time in the notice of appeal, serve a copy of the notice on the authority and any other party to the appeal at least 5 days before the return day.

(6) In this section—

“**return day**” means the day the parties are to attend before an industrial magistrate about the appeal.

20 Directions

The appeal must be conducted in accordance with the directions of an industrial magistrate.

21 Where appeal is to be heard—Act, s 88(3)

(1) The appeal is to be heard by an industrial magistrate at the place the notice of appeal is filed unless—

- (a) an industrial magistrate at the place directs that the appeal may more conveniently be heard by an industrial magistrate at another place; or
- (b) the parties agree the appeal may more conveniently be heard by an industrial magistrate at another place.

(2) The direction may be made on the application of a party or on the industrial magistrate’s own initiative.

(3) If a direction is made under subsection (1)(a) or the parties agree under subsection (1)(b), an industrial magistrate at the place must adjourn the appeal and forward all the appeal records to an industrial magistrate at the other place.

22 Attendance notice

(1) An industrial magistrate may by a written notice (“**attendance notice**”), require a person to attend at a hearing of the appeal at a stated time and place until excused, for 1 or more of the following—

- (a) to give evidence;
- (b) to produce a stated document or thing;
- (c) to establish a reasonable excuse claimed for a stated document or thing the person is required to produce.

23 Attendance notice must not be contravened

(1) A person who is given an attendance notice must not, unless the person has a reasonable excuse, fail to—

- (a) attend the hearing; or
- (b) continue to attend the hearing until excused; or
- (c) produce a document stated in the notice.

Maximum penalty—16 penalty units.

(2) It is a reasonable excuse for an individual to fail to produce a document or thing if producing the document or thing might tend to incriminate the individual.

PART 4—REPEAL

24 Repeal

The *Building and Construction Industry (Portable Long Service Leave) Regulation 1992* is repealed.

PART 5—TRANSITIONAL PROVISIONS FOR APPEALS STARTED UNDER REPEALED REGULATION

25 Definition for pt 5

In this part—

“repealed regulation” means the repealed *Building and Construction Industry (Portable Long Service Leave) Regulation 1992*.

26 Appeal started under repealed regulation

(1) This section applies if a person has started, but not completed, an appeal under the repealed regulation.

(2) The person may complete the appeal as if this regulation had not been made and the repealed regulation were still in force.

ENDNOTES

1. Made by the Governor in Council on 13 June 2002.
2. Notified in the gazette on 14 June 2002.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Industrial Relations.