

BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) BILL OF 1993

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

The objective of this Bill is to amend the *Building and Construction Industry (Portable Long Service Leave) Act 1991* to enhance the ongoing viability and equity of the Building and Construction Industry Portable Long Service Leave Scheme.

Reasons for the Bill

Following nine months of operation, the Building and Construction Industry (Portable Long Service Leave) Board conducted a detailed review of the scheme.

While conducting the scheduled review a number of problems emerged. These problems relate to the original actuarial assessment, compliance, owner-builders, industries which utilise their own employees to carry out their building and construction work and the levy obligations of Local Authorities.

In addition, particular industry organisations raised concerns about the equity and cost implications of the long service leave levy borne by the housing and land sectors. The Department of Housing, Local Government and Planning also raised concerns that the levy operates against the Department's commitment to provide affordable housing.

Investigations revealed that in order to—

- reduce the cost of the long service leave levy to the industry;
- improve the ongoing viability of the scheme; and
- remove the apparent inequities in the scheme's design

the *Building and Construction Industry (Portable Long Service Leave) Act 1991* needs to be amended.

The Bill will therefore provide for—

- an improved level of compliance with the *Building and Construction Industry (Portable Long Service Leave) Act 1991* by creating a statutory obligation on Local Authorities not to receive building applications until evidence of the payment of the long service leave levy has been produced.
- an owner builder's labour to be excluded from the payment of the levy.
- an exemption from the levy for those persons not in the building and construction industry who utilise their own employees to carry out their building and construction work.
- the situation that where building and construction work with a value of \$40,000 or more is to be carried out for government entities the levy is to be paid by that entity directly to the Board, in arrears.

It is anticipated that these amendments will lead to a progressive reduction in the long service leave levy rate as a consequence of increased compliance.

Estimated Cost for Government Implementation

There will be no cost for the Government in implementation as the scheme is self-funding and its operational costs do not have any impact on consolidated revenue.

However, where building and construction work is carried out for the Crown by external contractors or Local Authorities, the levy will be payable by the Crown to the Board.

Consultation

The Tripartite Board appointed to administer the legislation has been consulted regarding the proposed changes and supports the proposed amendments.

Consultation has also occurred with the Local Government Association, Department of Housing, Local Government and Planning and the Department of Business Industry and Regional Development.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Bill.

Clause 2 sets out the date on which the Bill will commence.

Clause 3 relates that the *Building and Construction Industry (Portable Long Service Leave) Act 1991* is the principal Act to be amended.

Clause 4 inserts into the definition section of the Act definitions of “government entity”, “owner-builder permit”, and “person” which are all referred to in Clause 6 of the Bill, and amends the definition of “employee” to include an employee of a government entity and of a body constituted under the Act of another State or Territory.

Clause 5 defines the concept of a person being substantially engaged in the building and construction industry. This concept is important to the existing definition of “building and construction industry” in section 3 of the Act, and to the exemption provision in the proposed section 63.

Clause 6 omits and replaces sections 60 to 65 for eight reasons—

- (1) to express the sections in plain English;
- (2) to ensure that no levy is payable for building and construction work or part of work—
 - that started before 1 July 1992;
 - that is carried out by or for persons not substantially engaged in the building and construction industry, if the work or part of the work is carried out by the person or the person’s employees;
 - that is carried out personally by an individual under an owner-builder’s permit;

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(3) to provide the meaning of the cost of building and construction work to be the contract price or if the work involves more than one contract, the total of the contract prices and if there is no contract the cost determined by the Board, and for work carried out by an owner-builder an amount specified by the regulation;

(4) to specify that the rate of long service leave levy is determined by regulation and is to be rounded to the nearest dollar (with 50 cents to be rounded down);

(5) to provide that the levy is to be paid by the person who makes the application to a local authority, and if no application is required, then the person for whom the work is to be done;

(6) to provide that the levy for building and construction work must be paid:

- before application is made to a local authority for building approval;
- if no application is required—before the work starts, or a later time determined by the Board;
- for a government entity—before the time, after the start of work, decided by the Board;

(7) to provide that a government entity must notify the Board, within three months of the start of work, of the building and construction work carried out by or for the entity;

(8) to ensure that a local authority will accept an application for building approval only if the local authority has sighted the approved Board form for payment of the levy or payment of the first instalment of the levy, or exemption from payment of the levy, or exemption from immediate payment of the levy.

Clause 7 amends section 77 to include government entities in the exemption for non-payment of the levy where building and construction work is performed by that entity's own employees.

Clause 8 amends section 68 by deleting the expression "due date" and replacing it with more current terminology in accordance with current legislative drafting practice.

Clause 9 omits section 69 as the determination of cost of building and construction work is now defined in section 65.

Clause 10 amends section 72(2)(b) to provide that in the case of payment by instalments, the first instalment is payable at the same time as the levy would be payable if it were not payable by instalments.

MINOR AND CONSEQUENTIAL AMENDMENTS

Clause 1 amends a grammatical error.

Clause 2 removes the definition of “Local Authority” as a result of it being defined in the *Acts Interpretation Act 1954*.

Clause 3 omits a superfluous provision.

Clause 4 omits an unnecessary provision. The validity and lawfulness of actions of the Board despite defects in membership is clearly spelt out in section 26 of the *Acts Interpretation Act 1954*.

Clauses 5, 6, 7, 8, 14, 17, 39 and 46 amend the Act to apply section 181(4) of the *Penalties and Sentences Act 1992*.

Clauses 9, 10 and 45 amend outdated references to sections of the *Industrial Relations Act 1990* as a result of 1992 amendments to that Act and reprint.

Clauses 11, 22, 23, 24, 25, 26, 27, 28 and 29 delete the expression “due date” and replace it with more modern terminology in accordance with current legislative drafting practice.

Clause 12 amends section 67(2) by omitting an unnecessary reference.

Clauses 13, 16, 18, 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 38, 42, 43, 44 delete the expression “bodies” and are consequential amendments as a result of the definition of “person” included by this Bill.

Clause 15 deletes section 70 (1) since it is superfluous as a result of the direct imposition of the liability of the long service leave levy on a government entity.

Clause 21 deletes a reference to a section repealed by this Bill and replaces it with a reference to the new provision in its place.

Clauses 40 and 41 amend the Act in accordance with current legislative drafting practice.

Clause 47 amends section 102 in two ways. Firstly, it expresses the section more in accordance with the provisions of the *Acts Interpretation Act 1954*. Secondly, it provides for the application of section 181(14) of the *Penalties and Sentences Act 1992*.