

Review of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*

1. Background

1.1 Sunset Review of the Building and Construction Industry Regulation

The *Building and Construction Industry (Portable Long Service Leave) Act 1991* (BCI Act) governs the equitable and efficient system of portability of long service leave (PLSL) in the building and construction industry. This legislation is supported by operational provisions in the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013* (the BCI Regulation).

Statutory principles provide that a regulation automatically expires (or ‘sunset’) after 10 years, unless action is taken to preserve. The purposes for the automatic expiry include to: reduce regulatory burden, ensure regulations are relevant, and ensure the Queensland regulations are of the highest standard.¹

Expiring regulations, such as the BCI Regulation, require the ‘sunset review’ to be undertaken to evaluate the continuing need, effectiveness and efficiency of the regulation. Given the BCI Regulation has now been operational for 10 years, as part of the sunset review, the Office of Industrial Relations is undertaking preliminary consultation with relevant stakeholders to identify if the regulation is performing as intended.

1.2 PLSL in Queensland

Long service leave is a workplace entitlement in Australia that provides employees with paid leave in recognition of long service with the same employer. As long service leave requires continuous service with the same employer, workers in industries with high rates of involuntary mobility due to inherent factors outside of their control (e.g. project-based work, short-term and non-recurrent funding) may have difficulties accessing such leave.

PLSL schemes allow workers to accumulate long service leave entitlements based on their continuous service in an industry, rather than with a single employer.

In Queensland, PLSL schemes have been implemented in several industries, including the building and construction industry.² Queensland’s PLSL authority is QLeave. Employers report the number of days a worker has performed eligible work to QLeave, who then records a worker’s total service in an industry (including if a worker changes employer). When the worker accumulates sufficient service credits, QLeave manages the long service leave payment for the employee.³

¹ Part 7 of the *Statutory Instruments Act 1992*.

² Three PLSL Scheme exist in Queensland with the: building and construction, community service and contract cleaning industries.

³ Once 2,200 service credits are recorded, 8.67 weeks of long service leave can be claimed in the building and construction industry PLSL Scheme.

2. Coverage of the BCI Regulation

The BCI Regulation is subordinate legislation made under the authority of the BCI Act. The BCI Regulation covers a range of matters and gives effect to sections within the BCI Act that are required to ensure the ongoing operation of the building and construction industry PLSL scheme (as well as other building and construction related arrangements).

In Queensland, the building and construction industry PLSL scheme is funded by a levy that is paid on the total cost of work for a building and construction project above a prescribed cost threshold. The levy and the levy threshold are prescribed in the BCI Regulation.

Currently, a combined levy⁴ of 0.575% is payable on the total costs, of building and construction work costing over \$150,000⁵ (excluding GST). The combined levy is comprised of a:

- 0.35% long service leave levy (building and construction industry PLSL levy) that is paid to QLeave to fund long service for Queensland's building and construction industry workers;
- 0.125% work health and safety levy that is paid to Workplace Health and Safety Queensland to support the work of government in regulating workplace health and safety; and
- 0.1% building and construction industry training levy that is paid to Construction Skills Queensland to fund training and skilling costs of workers and businesses in the building and construction industry.

Although the levy rate amount is prescribed in the BCI Regulation, it is not currently suitable for review. The BCI Act provides for an actuarial review of the levy rate every two years and that continues to be the appropriate mechanism for reviewing and establishing the levy rate.⁶ The building and construction PLSL levy rate has been 0.35% since 1 July 2020.

The BCI Regulation also provides for specified instances where the levy/parts of the levy are not payable for building and construction work. For example, in relation to particular geothermal drilling explorations, work for a prescribed entity, certain resources operational work and specified mining operations.⁷

The BCI Regulation also prescribes other operational provisions relating to the levy including refund-related provisions, the amount prescribed to pay the levy by instalments, calculating additional levy and the interest rate that is accrued on an unpaid levy.⁸

Transitional provisions, interstate declarations for the reciprocal recognition of service in the building and construction industry, the remuneration rate payable for approved forms, industrial magistrate appeals, and employee record requirements are also contained with the BCI Regulation.⁹

⁴ Section 6 of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*.

⁵ Section 5 of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*.

⁶ Section 35 of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

⁷ Section 5 of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*.

⁸ Sections 9 - 14 of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*.

⁹ Section 8 and Parts 4 -7 of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013*.

3. Review of the BCI Regulation

As the BCI Regulation is subordinate to the BCI Act, its review is limited to the sections contained within the BCI Regulation. The BCI Regulation cannot change provisions, such as purpose and meanings, provided in the BCI Act. For example, the BCI Act provides the meaning of building and construction work for the purpose of establishing which workers and employers are covered within the building and construction industry PLSL scheme.

The BCI Regulation is required to ensure the ongoing operation of the building and construction industry PLSL scheme. The current BCI Regulation has supported an efficient and effective PLSL scheme with well-established rules understood by scheme participants with minimal disputation.

A potential efficiency in the BCI Regulation could be achieved through the unitisation of prescribed monetary values. For example, section 8 of the BCI Regulation, which relates to the rate of remuneration payable to an assessment manager or local authority for sighting approved forms, could be expressed in fee units rather than dollars. This may reduce regulatory complexity and align with government policy to express rates in fee units, rather than dollars. Unitisation could also be considered in relation to sections 7, 9, 11 and 13 of the BCI Regulation. Although the monetary amounts in these sections are not fees, converting these dollar figures to fee units will provide for automatic indexation to ensure the figures maintain their value.

It is intended for the BCI Regulation to be remade, subject to the feedback received during the consultation period.

4. Submissions

Stakeholders in the building and construction industry are invited to provide feedback about the BCI Regulation and suggestions, if any, for its review.

Written submissions should be provided to irpolicy@oir.qld.gov.au by Monday, 4 September 2023.