

5 June 2019

Portable Long Service Leave Levy Consultation  
Director, Industrial Relations Strategic Policy  
Office of Industrial Relations  
PO Box 69  
BRISBANE QLD 4001

Dear Director

I refer to the Consultation Regulatory Impact Statement on proposed changes to QLeave levies (the RIS), which was released in early May 2019 by the Office of Industrial Relations (OIR).

#### **Background**

Some of the matters raised in the RIS were the subject of a lengthy review process undertaken through a partnership approach between QLeave and the QRC in 2013/14. The Queensland Government (Queensland Treasury and the Department of State Development) were closely involved in that review, and there was also consultation with worker and other industry representatives through the QLeave Board.

That review occurred at a time when the QLeave Portable Long Service Leave (PLSL) scheme was more than fully funded. This occurred largely because significant levies had been paid from the construction of three coal seam gas to LNG projects, as well as from projects related to the concurrent boom in mining construction.

Those projects were highly capital intensive, and levies were being paid on the cost of expensive capital items including equipment that was manufactured overseas and imported into Australia. The QLeave levies raised were therefore disproportionate to the number of people working on the projects that would ever have access to the leave scheme in Queensland.

For mining the review also identified that the definition of "construction work" was broad enough to cover many activities performed by coal mine workers who are covered by the Commonwealth Black Coal Industry PLSL scheme. Those coal workers would not access QLeave funds and coal mining companies were therefore making double PLSL payments. In addition, workers undertaking mining and gas operational activities at other kinds of resource operations are not covered by construction awards, and therefore they do not access QLeave funds either. This fact also contributed to over-funding the scheme because levies were being charged for resources sector work that was performed by workers who could not access the fund.

Furthermore, "construction" activity at a Queensland mine is not subject to the development application process if the construction is on a mine lease, so there is no trigger for the payment of the QLeave levy at the start of a project. This resulted in the application of significant penalty interest in a number of instances for unpaid QLeave to past operational mining activities.

To address these concerns and remove the duplication, careful consideration was given to defining resources sector work that is not "construction" work for the purposes of the QLeave legislation. Those reforms did not

exclude activity on mines that is properly construction work and performed by construction workers (as opposed to coal mine workers) – for example construction of mine offices and major fixed plant. Detailed supporting guidance materials were also developed at the time, but these no longer appear to be available on the QLeave website; the QRC believes that it would be useful if those could be reinstated.

The effective partnership approach described above saw the development first of a Memorandum of Understanding (MoU) between the QRC and QLeave, and ultimately led to legislative changes to the QLeave levy structure.

The changes that were introduced redressed the imbalance and reduced levy rates for all payers; GST was removed from the levy base, coal mine operational work was excluded, and tiered rates were introduced to prevent future over-funding. However, the way the review process is portrayed in the RIS makes the process open to misinterpretation by those who do not understand this background.

It is also worth noting that, in putting out a RIS proposing to reverse these changes and inviting “stakeholders to submit for consideration any alternative measures”, OIR is unilaterally discarding the MoU. The RIS does not reflect the level of effort that was involved, nor the degree of engagement and good faith from both sides that was displayed throughout the review process. It is in that same spirit that the QRC offers the following response to the RIS.

### **The tiered QLeave levy**

As explained previously, agreement on the tiered approach was intended to address concerns that large resources projects with high capital equipment costs were subject to excessive levies that bore no relationship to the forecast future capital requirements of the QLeave PLSL fund for eligible workers.

Prior to the 2013/14 changes, the QLeave scheme effectively required capital intensive resources projects to cross-subsidise other projects that incurred a higher proportion of cost from hiring the people that are eligible to access the PLSL scheme. While the QRC’s focus during the review was on the resources sector, the same could potentially be true of any capital-intensive building and construction program. This has been turned around in the RIS to assert that the tiered structure itself represents a cross-subsidisation of the resources industry by the broader building and construction industry.

The QRC is concerned that representing these changes the way the RIS does, could lead to the unwarranted and incorrect conclusion that it is our industry which has put the sustainability of the scheme at risk, if in fact it is actually at risk since this is not demonstrated in the RIS. On this basis, OIR should consider whether receiving a number of RIS responses that simply support removing the tiered approach could be a result of how the 2013/14 review is misrepresented in the RIS. Under these circumstances, the QRC believes that responses to the RIS supporting removing the tiered approach do not mean that the reasoning behind its introduction was invalid; nor do they mean that the basis for any subsequently amended model will be fairer and more reasonable.

The tiered approach was negotiated because QLeave did not wish to consider fundamental structural changes that would address more comprehensively any inequity in the scheme. QLeave wanted to avoid what they saw as an undesirable level of complexity, for example by exempting high value capital items from building and construction costs, excluding works on capital equipment undertaken overseas, or by calculating the levy in another way.

### **GST included as a leviable cost**

QRC notes the discussion in the RIS proposing the inclusion of GST in leviable costs but suggests that OIR should consider this issue in the context of the overall administration of the levy. Emphasis should be placed on levy design aspects that ensure it is efficient, effective and easy to administer. In other words, the levy should be both simple to calculate and simple to comply with to minimise administration for both payers and the QLeave staff who audit the levy payers.

For businesses who pay the levy, accounting standards require that costs and capital items are recorded in accounts net of any GST input tax credit available. The exclusion of GST from the cost base allows project proponents to easily examine their records and identify project costs for QLeave purposes. To include GST would require examination of the individual amounts, for example to separate items which do not attract GST (such as salary and wages, government charges etc), from those costs which do attract GST. Such an approach would significantly increase complexity, for the benefit of what appears to be a marginal increase in the levy base.

On this issue the RIS notes that "It is hard to quantify the exact impact of the GST exclusion on the scheme's levy revenue since it took effect on 1 July 2014 because GST is not a uniform tax that applies to every input cost for a project". This is exactly the point the QRC is making; not all costs attract GST and including GST in the levy paid up-front imposes additional costs in calculating the liability. The level of uncertainty involved also increases the uncertainty about whether including GST will ensure the scheme is sustainable.

At a policy level, QRC also considers that including GST when calculating a levy is akin to placing a tax upon a tax. The vast majority of GST registered businesses involved in building and construction work are entitled to input tax credits for any GST paid on construction costs. From a commercial perspective, any GST paid that is recoverable as an input tax credit, is not considered a true cost of building and construction work.

In relation to this recovery of input tax credits, the QRC notes that the Act currently allows for a refund of levies if final costs are lower than originally anticipated. To include the GST in the originally notified costs of doing work, and then remove it at the conclusion of the building and construction work because it has been recovered as an input tax credit would significantly increase the overall scheme complexity.

#### **Funding for targeted mental health and suicide strategies**

The QRC supports the provision of mental health services to reduce the potential for suicide in the workforce, and many QRC member companies run suicide prevention and other mental health awareness programs. The RIS refers to the Mates in Construction program, and we note that the related Mates in Mining program also operates successfully in the Queensland coal mining industry. While the cause of suicide prevention is important, the QRC is concerned the proposal might set a precedent for the Government seeking to introduce additional levies for other purposes, or for diverting funds raised through the levy for other general-purpose expenditure.

It is also not entirely clear, since the options discussed in the RIS relate to WH&S levy revenue, to what extent the proposal will apply to the resources projects undertaken by our membership. In saying this we also note the statement in the RIS that "the WHS regulatory activities of OIR are increasing... (in the) ... resources industry"; in this context "resources industry" cannot include the mining or petroleum industries whose health and safety compliance is regulated by the Department of Natural Resources, Mines and Energy, and who are subject to separate compliance levy arrangements.

The QRC also notes that WHSQ compliance activity, including compliance undertaken for the Building and Construction Industry, is partly funded through payments drawn from Workcover premiums. Resource companies also pay workers compensation premiums but get no benefit through the redirection of their premiums to the resource safety regulator. It is arguable that, if perceived cross subsidisation between the two industries is an issue to be discussed, then this matter should also have been considered in the RIS.

#### **Transitional arrangements for existing projects**

The RIS does not discuss whether existing projects already notified to QLeave will be subject to any change in the levy arrangements. QRC suggests that any currently notified projects be grandfathered from any changes, and that the new rules apply only prospectively to new building and construction projects notified to QLeave after the changes come into effect. The application of the QLeave levy to projects already underway would effectively be retrospective application of new laws, and poor public policy because those projects were approved, and work commenced, in accordance with a regulatory and fiscal environment that was in place at the time.

If you have any enquiries in relation to this matter, please contact Ms Judy Bertram on telephone 3316 2508 or email: [judyb@qrc.org.au](mailto:judyb@qrc.org.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ian Macfarlane', with a stylized flourish at the end.

Ian Macfarlane  
**Chief Executive**