

**SUBMISSION TO THE
AUSTRALIAN GOVERNMENT ON
NATIONAL EMPLOYMENT STANDARDS
DISCUSSION PAPER**

*** LONG SERVICE LEAVE ***

Introduction

The Board of TasBuild wishes to make brief comment on the proposed National Employment Standards in respect of long service leave.

TasBuild Limited is the Trustee of the Tasmanian Construction Industry Portable Long Service Fund. It administers the scheme in Tasmania in accordance with the *Construction Industry (Long Service) Act 1997* and the Trust Deed.

The scheme rewards service to the industry rather than any single employer in an industry.

An employee not employed in the construction industry in Tasmania is entitled to long service leave in accordance with the *1976 Long Service Leave Act (LSL Act)*.

An employee working in the construction industry may never qualify for long service leave under the LSL Act. This is not the fault of the employee. The situation arises because employment usually only occurs for short periods of time. In certain cases, employment lasts for the duration of a particular project. Once the project is complete, a construction employee's employment usually ends.

To overcome this problem, special long service leave schemes were established in each State, commencing with Tasmania in 1972. The schemes were designed to provide employees in the construction industry with an entitlement to long service leave. Under the schemes, an employee's entitlement to long service leave arises because he or she works for the qualifying period in the construction industry. The entitlement to long service leave is not dependant on the employee working continuously for one employer. It is the ability to continue to accrue long service despite working for different employers that gives rise to the description of these schemes as being 'portable' long service leave schemes. The schemes are linked by a National Reciprocal Agreement whereby workers moving from state to state or territory and remaining in the construction industry do not forfeit their entitlement to long service leave.

Statistics from TasBuild's databases indicate that over 80% of all employees who make a claim to entitlements against the fund have been employed by two or more employers.

The scheme in Tasmania is funded by a levy on employers of 0.3%* of the value of a workers' ordinary wage on either a monthly or quarterly basis. The rate current offered is

heavily subsidised to employers in the industry due to the nature of the scheme, i.e. monies collected and invested.

** 0.3% is charged to employers when returns are submitted on time and subsequent tax invoices are paid on time, otherwise the full cost of long service is charged at 2.5% equating to 13 weeks leave after 10 years of service.*

There is a further benefit of the schemes. They protect workers entitlements to long service leave in the event of the employer going into liquidation.

The fund size at 30 June 2007 was \$66 million. There were around 12,058 active workers and over 1200 employers covered by the fund. Total claims paid out in 2006/07 were \$1.4 million.

Comment

The TasBuild Board strongly supports the intention that workplace agreements cannot override state and territory laws. We are aware that in other states such as Victoria for example, a small number of employers have attempted to use certified agreements to contract their workers out of the scheme. Some employers have been successful in avoiding their obligations to the fund by this method, while others are the subject of pending costly legal action.

TasBuild is concerned about this development and believes for several reasons below, but not limited to these, that employers and employees should not be able to opt out of construction industry long service schemes:

- It is important that a level playing field in the industry is maintained, this makes a fair and equitable system for all employers operating in a competitive environment.
- TasBuild is able to offer employers in the industry a heavily subsidised contribution rate meaning that the cost of long service leave to employers in the industry is a small percentage of what it would cost them should they have to fund the leave direct - the liability and administration of such leave is taken out of their hands.
- Protection of employee entitlements is achieved due to the scheme being responsible for the payment of long service leave in the industry.
- The schemes offer excellent long service leave provisions equal to and if not better than other varying state and territory long service legislation.

The TasBuild Board urges the Australian Government to take an interim measure to prevent employers contracting out of their obligations under the Tasmanian Act in the short term. This can be achieved by making a regulation under section 17(2) (d) of the Workplace Relations Act 1996 as soon as possible.

A suggested draft regulation is attached.

The Board has also earlier this year, made a submission to the Minister for Workplace Relations in Tasmania asking him to make similar representations to the Federal Minister. This submission has been made as part of a co-ordinated approach to this issue by all state and territory construction industry long service leave authorities.

Portable long service leave has been successfully established for the construction industry in Australia for a number of years – in Tasmania in excess of 35 years. Whilst there are differences between aspects of the state and territory schemes, these are generally minor and all states and territories work together co-operatively providing a valuable service to employers in the industry and portable benefits to workers in the industry.

In closing, the TasBuild Board urges the Government to recognise the important role schemes such as ours play in the industry in Australia.

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ANNEXURE 1

PROPOSED AMENDMENT TO WORKPLACE RELATIONS REGULATIONS 2006

Insert as proposed regulation after regulation 2.1.6(1)(c):

"(d) long service leave, to the extent that an employer and employee are subject to portable long service leave legislation.

1.6(1A) For the purposes of regulation 1.6(1)(d), "portable long service leave legislation" means the following:

- (a) *Construction Industry Long Service Leave Act 1997* (Vic);
- (b) *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld);
- (c) *Construction Industry Portable Paid Long Service Leave Act 1985* (WA);
- (d) *Construction Industry (Long Service Leave) Act 1997* (Tas);
- (e) *Construction Industry Long Service Leave Act 1987* (SA);
- (f) *Construction Industry Long Service Leave and Benefits Act 2005* (NT);
- (g) *Building and Construction Industry Long Service Leave Payments Act 1986* (NSW);
- (h) *Long Service Leave (Building and Construction Industry) Act 1981* (ACT);
- (i) *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* * (Qld); and
- (j) *Long Service Leave (Contract Cleaning Industry) Act 1999* * (ACT).

*** Long service leave schemes for the contract cleaning industry**

Whilst Tasmania does not have a scheme for the contract cleaning industry it should be noted that legislation has been enacted in Queensland and the Australian Capital Territory (*Contract Cleaning Industry (Portable Long Service Leave) Act 2005* and the *Long Service Leave (Contract Cleaning Industry) Act 1999* respectively) that provides for portable long service leave in the same way as for the construction industry and these schemes are administered by the same bodies in each respective state and territory. As such the same threat applies to these schemes and as such the amendment requested to the Regulations encompasses those two pieces of legislation. However, in the submission to the Minister for Workplace Relations and our comments on the National Employment Standards paper we have concentrated on the construction industry.