

# **DISCUSSION PAPER**

## **A REVIEW OF THE *CONSTRUCTION INDUSTRY LONG SERVICE LEAVE AND BENEFITS ACT (NT)***

**September 2013**



## ***Introduction***

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NT Build is responsible for the administration of the statutory based portable long service leave scheme for building and construction workers in the Northern Territory. The Scheme has now been operating for over 8 years. One of NT Build's functions is to advise the responsible Minister regarding the operation of the *Construction Industry Long Service Leave and Benefits Act (CILSLB Act)*. Following a submission to him, the Minister has agreed that NT Build should undertake a review subject to further consultation with Industry participants.

This discussion paper provides industry participants interested in the operation of the portable long service leave arrangements in the Northern Territory with a brief overview and opportunity to comment on key issues involved with the administration of the NT scheme. It also provides a snap shot comparison of construction industry portable long service leave scheme arrangements in other states and territories.

## ***Background***

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The Northern Territory's portable long service leave scheme for building and construction industry workers commenced on 1 July 2005. The Scheme enables eligible workers to qualify for long service leave (LSL) entitlements based on service in the industry rather than service to a single employer. The portability extends across state and territory borders under the National Reciprocal Agreement. This means interstate construction workers are able to work in the Northern Territory without loss of long service leave entitlements accrued elsewhere and vice versa and hence there is no disincentive for construction workers to come to the Territory on these grounds. The Scheme is funded by a levy on construction work in the Territory and investment earnings on accrued funds.

The levy is determined using actuarial estimates of the anticipated level of expenses and income for the Scheme. The current levy rate is 0.3% of the cost of construction work and has been applicable since 1 April 2012.

A levy is payable on all projects over \$200,000 in value. However the levy does not apply to single detached dwellings or work undertaken for not for profit organisations using voluntary labour or donated materials. The current levy rate was set by the Minister based on actuarial advice and having regard to the significant exclusions in the Territory Scheme.

The NT Build Board (established as a body corporate under the CILSLB Act) is responsible for administering the Scheme.

The Board currently consists of 6 members. They include an independent Chairperson; a Ministerial nominee from the Department of Treasury and Finance; two employer organisation nominees, and two employee organisation nominees.

All costs related to the administration of the Scheme are met by NT Build and as such, no general allocation of funding is provided through the Territory Budget.

## ***Construction Work***

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For the purpose of the CILSLB Act, leviable construction work covers civil works, land draining & reclamation, earthworks, site restoration and landscaping. It also includes altering, repairing, restoring, maintaining, dismantling, demolishing or removing buildings, structures or fittings and fixtures therein. Construction work can also include preparatory work but does not include mining. Wholly artistic works are also generally not considered to amount to construction work. The full definition of construction work is included in the *Construction Contracts (Security of Payments) Act*.

## ***Scheme Funding***

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All Australian states and territories have schemes that provide portable long service leave benefits to workers in the building and construction industry. Under these schemes, eligibility for LSL benefits is based on service in the industry, rather than service with a single employer.

A summary of existing interstate scheme arrangements is at [Attachment 1](#).

Each scheme recognises the service of registered workers in other jurisdictions, effectively providing a national system of portable LSL benefits for the industry.

Interstate schemes are financed and funded through two quite distinct methods:

- A direct payment model by the employer to the scheme of an actuarially determined amount, approved by both the scheme and the relevant Minister, of a percentage of the employee's ordinary or normal pay. Payments in these jurisdictions are made on a monthly, bi-monthly or quarterly basis. This approach is taken in Victoria, ACT, Tasmania, Western Australia and South Australia. The percentage payment varies from 1.75% to 2.7% of normal pay. These schemes are commonly referred to as wages based levy schemes.

- A levy on building projects over a certain size with payment made by the prime developer or permit holder. This occurs in NSW, Queensland and the NT. Current rates are set at 0.35% of the project value over \$25,000 in NSW and 0.3% of the project value over \$80,000 in Qld. In the NT the levy rate is 0.3% and the project value must be \$200,000 or more. These schemes are commonly referred to as project based levy schemes.

Whilst the project based levy approach is widely regarded as the most administratively efficient method of collecting funds, in reality it constitutes a levy on eligible construction work above a specified level. The benefit arises out of and is incidental to an employment relationship but the cost of the long service leave is financed directly by the levy on building and construction projects. The employer is still required to register and provide information to the scheme administrator (in the NT every 6 months) but is not required to directly fund the LSL benefit to individual employees.

However, as the project based levy is applied to the total cost of a project it is applied to the cost of major capital equipment incorporated in the works. Some of this equipment is imported and in any case is not fabricated by beneficiaries of the Scheme. Proponents of major resource and capital intensive projects have expressed their opposition to this methodology as it may lead to their project contributing more to the Scheme than the actual liability generated by their project.

In the wages based levy approach, the cost of compliance is greater because of the increased complexity of such a scheme. The administrative burden and cost on both NT Build and employers would be more onerous than under the existing project based scheme.

Required employment details that would need to be provided relate to ordinary time earnings details per employee and actual days worked. The definition of salary for the scheme would need to be defined, as would the complex question of who is an employee. The wages based levy model would also make it impossible to provide exemptions for particular types of projects (e.g. housing) or a threshold to which the levy is applied (currently \$200,000 in the NT).

Any change to the NT Scheme funding model would need specific and detailed analysis. No jurisdiction has ever attempted a transition from one funding method to another due to the complexity of such a fundamental change.

## **Levy Administration**

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Unlike in Qld and NSW, the levy in the NT does not apply to the construction of single detached homes. In the remainder of the jurisdictions with a wages based levy there are no exemptions because the levy is a percentage of the workers ordinary or normal pay, regardless of what they are constructing.

Effective from 1 July 2009 the Northern Territory Government introduced a legislative amendment affecting the calculation of the long service levy on major construction projects undertaken in the Territory. The amendment saw the introduction of a two tier levy regime on projects with construction costs in excess of \$1 billion.

- The levy rate of 0.3% applies in relation to the first \$1 billion of the project cost; and
- An additional percentage rate determined by the Minister, upon consideration of actuarial advice, is applied to the total of the excess cost of the construction works that exceeds \$1 billion.

In NSW and Qld the levy is collected on behalf of the schemes by local councils at the time a building permit is taken out. This does not apply in the NT as building regulation remains the responsibility of the NT Government.

In the NT, the obligation to notify that a project has commenced and is eligible to pay the levy rests with the project owner. As a consequence the Scheme expends considerable effort to ensure compliance. Since the Scheme's inception in 2005, the Auditor General has provided a qualified audit opinion on the Scheme's financial statements. The key finding concerns the completeness of long service levy income due to the current nature of the building approval process within the Northern Territory.

In the NT, building permits are not required outside of designated building control areas thus limiting the effectiveness of the approach used in NSW and Qld. Notwithstanding this, amendments to relevant NT legislation requiring notification of the project to NT Build at the time a building permit is taken out would further improve administrative efficiency. It would also ensure that the requirements of the CILSLB Act are known by levy payers prior to any works commencing.

## ***Scheme Levy Exemptions***

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The NT Scheme is funded by a levy imposed on eligible construction projects as defined in the *Construction Contracts (Security of Payments) Act* (CCSP Act) of at least \$200,000 or more in value.

Sections 6 (2) and (3) of the CCSP Act provides that construction work does not include any of the following work on a site in the Territory:

- a) Drilling for the purposes of discovering or extracting oil or natural gas, whether or not on land;
- b) Constructing a shaft, pit or quarry, or drilling, for the purposes of discovering or extracting any mineral bearing or other substance;
- c) Constructing, installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing wholly artistic works including sculptures, installations and murals;
- d) Work prescribed by the Regulations not to be construction work for this Act.

Coverage of the CILSLB Act in the Territory includes construction work carried out to the 3 nautical mile mark. It also includes work carried out by the Federal, Territory and Local Government bodies.

As noted earlier the levy does not apply to the construction of single detached dwellings, notwithstanding the fact that construction workers involved in the housing sector are eligible for registration. This combination of exempt construction work and worker eligibility effectively requires that there be a cross-subsidy from all other eligible construction work.

The exemption of single detached dwellings from the levy ensures that the scheme does not impose any additional burden on housing affordability.

The current levy on a project value of \$200,000 is \$600. The cost of collecting the levy and other administrative tasks for both NT Build and the levy payer raises the issue of whether the threshold should be raised in the interest of administrative efficiency.

Any consideration of either raising the minimum threshold of \$200,000 or excluding any other classes of construction activity, such as duplexes, from the application of the levy would require actuarial analysis to determine what impact they would have on scheme solvency and/or the levy amount.

Under the wages based levy model the levy would effectively apply to all construction activity as an on cost of employment. Employers would then most likely pass on the cost to all project and home owners alike.

## ***Nationally Portable Long Service Leave***

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A worker may be registered with a number of different schemes depending on the location of prior service. As a consequence of this, all State and Territory Governments, have developed and signed an agreement providing for recognition of service between schemes. The agreement does not actually transfer entitlements across or between jurisdictions, it simply provides for accumulation of service and payment according to the different jurisdictional requirements.

In essence a worker who completes a total of 10 years' service of which 5 years was in the NT and an earlier 5 in QLD would receive a total payment equivalent to 5 years benefit calculated in accordance with the NT Scheme plus 5 years calculated in accordance with the Qld Scheme. The payment would be made by the NT Scheme with the Qld Scheme transferring the appropriate funding within an agreed timeframe.

The introduction of specific NT arrangements means that employees accrue benefits whilst employed in the NT and don't forgo or lose accrued benefits in other schemes. There is anecdotal evidence suggesting that the earlier absence of portable long service leave arrangements had an impact on recruitment and retention of employees for the NT industry.

## ***Number of days per annum required to constitute a year of service***

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The requirement to work 260 days to accrue a year of service in the industry effectively means that a NT construction industry worker must work the equivalent of 52 x 5 day weeks. This requirement appears excessive when compared to the other jurisdictions. In QLD and NSW, which provide the majority of interstate construction workers to the NT, the requirement is 220 days. The ACT and WA also only require 220 days. South Australia, Victoria and Tasmania each require 260 days in order to receive a year of service.

The lower 220 day threshold in some states provides recognition that frictional unemployment is an unavoidable part of industry participation, even for those that consider themselves as full time workers. The impact of requiring 260 days of service credit, rather than 220 days, to earn a year of service is that workers who work near to full time but have periods of shutdown or transition between periods of employment do not receive credit for those periods without employment.

While workers are not given service credits for periods of unemployment, in an industry where casual employment and turnover between jobs is a regular feature, those frictional periods of unemployment result in lower long service leave credits.



Seasonal weather variability further exacerbates the capacity of NT construction industry workers to achieve 260 working days a year to receive a year of service credit. A worker that exceeds 260 days of qualifying service in a year cannot exceed the long service leave credit of 6.5 days.

Any consideration of reducing the service requirement to 220 days per year will require actuarial analysis to ensure that the Scheme's long term financial viability and levy rate is not affected.

## ***Contact Details***

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Should you wish to comment upon, or provide a submission on the review of the *Construction Industry Long Service Leave and Benefits Act* please contact either of the two people below;

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## Portable Long Service Leave – national snapshot – as at September 2013

State/Territory	ACT	NSW	VIC	QLD	SA	WA	TAS	NT
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### LEAVE ACCRUAL

<b>Long service leave</b>	13 weeks after 10 years. (from 1/1/1997)  Prior was 13 weeks after 15 years. May request payment in lieu of leave.	13 weeks after 15 years 8.67 weeks after 10 years	13 weeks after 10 years (from 1/7/2002)  Prior was 13 weeks after 15 years	8.67 weeks after 10 years	13 weeks after 10 years 9.1 weeks after 7 years	8.6 weeks after 10 years (Further) 4.3 weeks after 15 years	13 weeks after 10 years (as from 1 January 2006).  Prior was 13 weeks after 15 years	13 weeks after 10 years
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### MINIMUM SERVICE FOR CLAIMING

<b>Long service leave</b>	10 years	10 years then every 5 subsequent years	7 years (9.1 weeks entitlement)	10 years	10 years	7 years	10 years	10 years then every subsequent 5 years. (multiple claims allowed but must claim 5 days or more credit per claim)
<b>Leaving industry</b>	5 years <b>7 years for workers registered after 1/7/2012</b>	5 years	7 years	7 years	7 years	7 years	**7years	7yrs if ceasing construction work, 5yrs if deregistered

### CREDITED SERVICE

<b>Recorded in: Credited Days</b>	Credited days 220 = 1 yr	Credited days 220 = 1 yr	Credited days 260 = 1 yr	Credited days 220 = 1 yr	Credited days 260 = 1 yr	Credited days 220 = 1 yr	Credited days 260 = 1 yr	Credited days 260 = 1 yr
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### CONTRACTORS

<b>Covered?</b>	Yes	Yes	Yes (self-contribute \$30-\$80 per month)	Yes (only 'labour only' contractors)	Yes	No	Yes	Yes (only 'labour only' contractors)
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Continued: PLSL – national snapshot – as at September 2013

State/Territory	ACT	NSW	VIC	QLD	SA	WA	TAS	NT
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**RATE OF BENEFIT PAYMENT**

	Higher average of last 6 months or 12 months declared pay or rate of declared pay immediately prior to a work related injury if on workers comp	Ordinary rate of pay under award or registered agreement at date of claim	Ordinary pay at time of taking leave	Ordinary pay at time of taking leave subject to a cap set annually by Regulation	Average of 12 months remuneration prior to taking leave.	Average of 12 months ordinary pay prior to taking leave	Ordinary Wage at date entitlement arises	As determined by Board, having regard for average wkly rate as per ABS
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**CONTRIBUTION RATE**

Wages v's Project Based Levy	Wages Based	Project Based	Wages Based	Project Based	Wages Based	Wages Based	Wages Based	Project Based
	1.75% of pay from 1/10/2012  (previously 1.25% of pay post 1/7/2011 and 1.00% of pay pre 1/7/2011)	0.35% of project cost of \$25,000 or more.	2.7% of ordinary pay from 1/7/09	0.3% of building project costs of \$80,000 or more	2.25% of pay	2 % of pay	2.0% of pay from 1/10/09	***0.3% (from 1/4/2012) of construction cost of \$200,000 or more – excluding class 10(a) building under building code of Aust  (previously 0.4% from 1/7/2009 and 0.5% from 1/7/2005)

\* QLD - Leaving the Industry claims allowable if employee has been registered with any scheme for 7 years and has at least 1155 service credits or at least 1100 service credits and any part of the service is 'retrospective' service (1540 service credits = 7 years full time, 1155 = 7 years part time)

\*\*\* NT - Where the total cost of the works exceeds the \$1 billion threshold, then the standard levy rate (currently 0.3%) is applied to the first \$1 billion of the construction costs and a percentage rate determined by the Minister is applied to the total of the excess cost of the construction works that exceeds \$1 billion.