

11 April 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee

Email: lacsc@parliament.qld.gov.au

Dear Mr Berry

For many years the QRC has had serious concerns regarding the disproportionate contribution that was being made by the resources sector to the Building and Construction Industry (B&CI) Long Service Leave Scheme. QRC's many attempts to redress this situation over the years had unfortunately been unsuccessful.

With the development of the capital intensive, mega gas projects in Queensland over the last 5 years, the harsh reality of contributions from the resources sector far exceeding the level of benefits that would ever be returned to workers in the form of long service leave benefits, became very evident and were clearly no longer able to be justified.

In mid 2013, QRC was successful in gaining support for a review of the Building and Construction Industry (B&CI) Long Service Leave Scheme. This review was endorsed by the Resources Cabinet Committee and jointly undertaken by QRC, QLeave and representatives from the Department of State Development, Infrastructure and Planning and the Department of Justice and Attorney General. It was a comprehensive and rigorous review, undertaken in a spirit of cooperation and good will.

As shown in the Memorandum of Understanding (MoU) between QLeave and QRC, the review proposes changes which are designed to ensure the Scheme:

- continues to meet the needs of the whole Building and Construction Industry in an efficient manner,
- is sustainable and fully funded,
- is fair and equitable across industry sectors,
- delivers a general reduction in the levy, if possible; and
- maintains simplicity and efficiency in administration.

I would like to congratulate the Newman government for acting quickly to amend the legislation. The amendments to the Act tabled in Parliament are consistent with the agreements that were reached through the review process.

One issue which I would like to raise on behalf of the resources sector relates to Clause 6. The clause excludes employees of managers of unincorporated JVs (and others) who are not substantially engaged in the mining industry, which addresses one of the concerns raised during the review process by resources companies. The concern relates to the proposal that work performed by such workers 'may be exempted' by the QLeave Authority. This gives rise to a number of concerns:

- First, it means that arguably an exception needs to be applied in advance on a case by case basis, requiring additional administration and cost by both the QLeave Authority and project proponents.
- Second, it is discretionary ('may exempt' vs 'must exempt') so there is no certainty as to what the outcome will be, and no criteria are given regarding the basis on which the discretion is to be exercised (which means the decision cannot be challenged – this ambiguity and lack of grounds is arguably contrary to fundamental legislative drafting principles.)

As the intent is that such workers would be excluded as a matter of course then the far better outcome would be to **remove this clause from the Act and simply include these categories of workers in the regulations** as another category of excluded workers.

This approach has the following benefits:

- reduces length of the Act, in line with the Government's red tape cutting agenda;
- reduces red tape and administration costs for both the QLeave Authority and industry, by removing the need for individual applications to be made and assessed on a case-by-case basis;
- increases certainty for industry by having a clear exclusion rather than a discretionary exemption; and
- removes an ambiguous discretion that arguably breaches fundamental legislative principles.

The MoU, which is the result of extensive negotiation and deliberation throughout the review process, outlines a range of agreements reached including


- a tiered levy rate for projects over \$1B in the construction phase
- exclusion of operational resource sector activities (Guidance Note prepared)
- transitional arrangements to apply for mega capital intensive projects that remain under construction at the date the legislation is enacted with one off rebates to apply for eligible projects
- an overall reduction in the levy, subject to actuarial assessment
- GST to be excluded from the cost of leviable works
- penalty interest to be reduced to the rate charged by the Office of State Revenue
- minimum thresholds to be increased from \$80K to \$150K
- the cost of Feasibility Studies and Environmental Impact Statements to be excluded from the project cost.

The majority of these agreements will be required to be translated into the regulations and associated guidance material. These are matters, steeped in complexity. For example the agreed exclusion of operational resource sector activities in the calculation of the levy is imperative but extremely technical in its definition. The guidance note that was developed which defines operational resources work, is the product of extensive debate and negotiation during the review process which involved the assistance of legal counsel as well as the review committee. Because of this, QRC is seeking ongoing involvement throughout the drafting of the regulations and associated guidance material to ensure that wording is entirely accurate and nothing gets lost or misunderstood in translation.

Once again may I congratulate the Newman government for progressing amendments to the Building and Construction Industry (Portable Long Service Leave) Act 1991. These changes will make the scheme more equitable across industry sectors and will reduce red tape and unnecessary costs to Queensland's resources sector.

QRC is keen to be involved in any way necessary to bring this work to a successful conclusion. While this may not be common practice in developing new legislation or regulations, there are precedents where it is imperative that the wording is absolutely accurate and the experts are in industry rather than in the Office of Parliamentary Counsel. Please do not hesitate to contact me on michaelr@qrc.org.au or on ph 3316 2527 should you have any queries.

Yours sincerely



Michael Roche
Chief Executive