



TERMS OF REFERENCE FOR THE REVIEW OF THE CONSTRUCTION INDUSTRY PORTABLE PAID LONG SERVICE LEAVE ACT 1985

The *Construction Industry Portable Paid Long Service Leave Act 1985* (the Act) was enacted by Parliament to make provision for paid long service leave to employees engaged in the construction industry and for incidental and other purposes.

The purpose of the Act was to recognise the short-term nature of the construction industry and provide workers within the industry the benefits that were already enjoyed by workers in similar industries where they can accumulate 15 years' service working for one employer by providing for the portability of long service leave within the industry.

The Construction Industry Long Service Leave Payments Board, trading as MyLeave, is a statutory authority established to carry out the administration of the Act, inclusive of regulating and managing long service leave entitlements on behalf of eligible employees in the construction industry in Western Australia.

Since the commencement of the Act, the industrial relations environment in Western Australia has evolved to an extent that a range of issues illustrate the disconnect between the Act and the contemporary construction industry.

The Review is being commissioned to determine whether the overarching intent of the Act is being met for the contemporary construction industry and its workers.

The Review of the Act is to consider, report and make recommendations with respect to the following matters inclusive of any potential legislative amendments.

- 1) Review whether the Act contemplates the modern construction workforce to ensure all cohorts of construction workers can access portable long service leave.
- 2) Consider if definitions of the Terms used in the Act provide certainty and consistency for employers and workers.
- 3) Assess whether the core terms of 'days of service', 'ordinary pay' and 'ordinary hours' reflect the contemporary construction workforce and result in fair and equitable application of portable long service leave entitlements having regard to differing employment arrangements.
- 4) Review whether the current method of accruing entitlements using 'days of service' reflects contemporary workforce models.
- 5) Examine whether industrial relations instruments and prescribed classifications of work incorporated within the Act and Regulations is an effective method of capturing workers in the construction industry, and if not, propose alternatives.
- 6) Consider if there is sufficient flexibility in the Act to provide for absences and allow workers flexibility in accessing portable long service leave entitlements having regard to the high-risk nature of the construction industry.

- 7) Assess whether there are any deficiencies or anomalies in the operation of the Act in terms of the equitable and fair payment of contributions by employers and the payment of long service leave entitlements to workers.
- 8) Assess whether the Act provides flexibility to allow for the efficient and effective administration of portable long service leave.
- 9) Consider provisions to ensure the intent of the Act is consistently achieved and minimise the regulatory burden on participants.
- 10) Review the statutory compliance and enforcement mechanisms with the objectives of:
 - a) ensuring that workers are paid their correct entitlements,
 - b) providing effective deterrents to non-compliance,
 - c) updating the Board's powers and tools of enforcement to ensure the Board is able to effectively perform its statutory functions, and
 - d) provide timely and cost-effective dispute resolution mechanisms.
- 11) Consider the varying arrangements of portable long service leave schemes applying in other states and territories of Australia, and any beneficial changes or harmonisation opportunities resulting from that review.
- 12) Other matters incidental or relevant to the Reviewer's consideration of the preceding terms of reference.