

NATIONAL RECIPROCAL AGREEMENT

BETWEEN THE

STATES AND TERRITORIES

**FOR THE PROVISION OF LONG
SERVICE LEAVE**

IN THE

**BUILDING & CONSTRUCTION
INDUSTRY**

This **AGREEMENT** is taken to be effective from the first day of July 2005. The original agreement is terminated from that date.

BETWEEN

The Minister for Industrial Relations for the State of Victoria

The Minister for Industrial Relations for the State of New South Wales

The Minister for Industrial Relations for the State of South Australia

The Minister for Consumer and Employment Protection for the State of Western Australia

The Minister for Industrial Relations for the Australian Capital Territory

The Minister for Employment, Training and Industrial Relations for the State of Queensland

The Minister for Infrastructure, Energy and Resources for the State of Tasmania and

The Minister for Public Employment for the Northern Territory.

AND IS BINDING UPON

CoINVEST Limited as Corporate Trustee for the Construction Industry Long Service Leave Fund of Victoria

AND

The Building and Construction Industry Long Service Payments Corporation of New South Wales

AND

The Construction Industry Long Service Leave Board of South Australia

AND

The Construction Industry Long Service Leave Payments Board of Western Australia

AND

The Construction Industry Long Service Leave Authority of the Australian Capital Territory

AND

The Building and Construction Industry (Portable Long Service Leave) Authority of Queensland.

AND

TasBuild Limited being and as Trustee and Administrator of the Fund vested under the Construction Industry (Long Service) Act 1997 in Tasmania

AND

NT Build for the Northern Territory.

WHEREAS:

The Ministers of State responsible for portable long service entitlements to workers, in the building and or construction industry in the States and Territories who are party to this Agreement, are desirous of making a reciprocal Agreement governing the respective Boards and Corporations charged with administration of building and construction industry long service entitlements.

The Agreement provides for recognition of the workers' service in the building or construction industry, performed in any jurisdiction covered by the Agreement, for the purpose of qualifying for an equitable sharing of the burden of entitlements between the respective long service Boards and Corporations.

The necessary powers which enable the Ministers of State representing the parties to enter into this Agreement are contained in the relevant Acts.

The Act in respect of each of the jurisdictions has been mutually prescribed in each other Act as an approved or a corresponding law for the purpose of entering into this Agreement.

THE PARTIES AGREE:**Definitions in this Agreement:**

“Act(s) ” means in respect of

- (i) the State of Victoria, the Construction Industry Long Service Leave Act 1997; or
- (ii) the State of New South Wales, the Building and Construction Industry Long Service Payments Act 1986, as amended; or
- (iii) the State of South Australia, the Construction Industry Long Service Leave Act 1987; or
- (iv) the State of Western Australia, the Construction Industry Portable Paid Long Service Leave Act 1985;
- (v) the Australian Capital Territory, the Long Service Leave (Building and Construction Industry) Act 1981; or
- (vi) the State of Queensland, the Building and Construction Industry (Portable Long Service Leave) Act 1991,
- (vii) the State of Tasmania, the Construction Industry (Long Service) Act 1997
- (viii) the Northern Territory, the Construction Industry Long Service Leave and Benefits Act 2005

all as amended from time to time as the context requires

“industry” means the building and or construction industry as defined in the respective Acts as the case requires;

“*jurisdiction*” means in respect of each of the Boards and Corporations their respective States or Territories;

“*qualifying period*” means the period of service which qualifies a worker to a long service entitlement in the jurisdiction in which the claim is lodged;

“*service*” means service of a worker in the industry that entitles him or her to receive service credits under the Act relevant to the locality of the worker's industry.

“*service credit*” means:

- (i.) in relation to Victoria, the period of continuous service in the construction industry recorded in relation to a person by CoINVEST Limited in accordance with the provisions of the Victorian Act;
- (ii.) in relation to New South Wales, the number of days service in the building and construction industry with which a worker is credited in the register of workers in accordance with the New South Wales Act;
- (iii.) in relation to South Australia, service entitlements credited in relation to a person in the books of the South Australian Board in accordance with the South Australian legislation;
- (iv.) in relation to Western Australia, the period of service recorded in relation to a person by the Western Australian Board in accordance with the provisions of the Western Australian Act;
- (v.) in relation to the Australian Capital Territory, service for which a person is given credit in the Employees and Contractors Register in accordance with the Australian Capital Territory Act;
- (vi.) in relation to Queensland, the number of days service in the building and construction industry with which an worker is credited in the register of workers in accordance with the Queensland Act;
- (vii.) in relation to Tasmania, the period of relevant employment in the construction industry recorded and registered in relation to a person by TasBuild Limited in accordance with the law of Tasmania; and
- (viii.) in relation to the Northern Territory, service for which a person is given credit in accordance with the Northern Territory Act.

“*worker*” means a natural person who works in the industry and whose work entitles him or her to receive service credits recorded under an Act relevant to the locality of the worker's industry.

“*resident*” means three months or sixty days service in the State or Territory of the most recent worker service, depending on the provisions in the Act of that jurisdiction. (This clause will operate only to determine that a bona fide residency exists. In special circumstances determined by the respective Board or Corporation it may be waived.)

1. Recognition of Service

- 1.1 Subject to 1.2 each party will recognise a worker's service credits in the other parties' jurisdiction as part of that worker's qualifying period of service for an entitlement in its own jurisdiction.
- 1.2 Clause 1.1 does not apply unless a worker notifies the relevant Board or Corporation in the jurisdiction of his or her last registration as a worker, a request to have recognised service credits of that worker from another jurisdiction.
- 1.3 Where the name of a worker is, or is liable to be, removed from the register in a jurisdiction, on a date on or after the date identified in the relevant Reciprocal Arrangement that existed between the jurisdictions immediately before the commencement of this Agreement, as a result of a period (as defined by the Act of the worker's jurisdiction) during which no service credits accrued to the worker, the name of the worker shall be restored to the register, or not removed from the register, as the case requires, if during the period identified, the worker was awarded service credits in another jurisdiction.

2. Liability for Payment

- 2.1 Where a worker qualifies for a long service entitlement in one jurisdiction and part of the qualifying period is in respect of service in another jurisdiction, the party or parties in the other jurisdiction shall become liable for payment in respect of their part of the period of service.
- 2.2 The basis of a party's liability for payment of a long service entitlement is:
 - (i) the Board or Corporation in the jurisdiction where the worker last recorded service as a worker shall recognise a worker's service credits in other jurisdictions to determine whether a worker is qualified for an entitlement.
 - (ii) each Board and Corporation must then decide the amount payable under the Act for that proportion of the worker's combined service credits which accrued to the worker in that jurisdiction and
 - (iii) each Board and Corporation must pay the amount determined in (ii).
- 2.3 This clause also applies to employers who have paid an entitlement in respect of a worker's service credit and who are entitled under the relevant Act to be reimbursed.

3. The Making of Long Service Entitlements Payments

- 3.1 A worker is entitled to make a claim for long service leave entitlement only in the State or Territory in which he or she is resident, unless the Board or Corporation which is dealing with the claim in accordance with the provisions of 2.2 (i) determines otherwise.

- 3.2 Each Board or Corporation must make payments on behalf of the Boards or Corporations in another jurisdiction to workers in respect of service in another jurisdiction, in accordance with this Agreement.
- 3.3 The amount to be paid to a worker in respect of service in a jurisdiction is exclusively a matter for the Board or Corporation in that jurisdiction to calculate in accordance with the relevant Act.
- 3.4 Where an application for an entitlement is made which involves service in more than one jurisdiction, each party shall as soon as possible provide the other with such information as is in its possession, and which will enable the other party to assess the application.
- 3.5 The Board or Corporation on whom the application is made must be advised by the other Boards or Corporations of the sum that is to be paid by it, to or in respect of the worker, on behalf of the other Boards or Corporations.
- 3.6 Upon being so advised pursuant to Clause 3.5 the Board or Corporation on whom the application is made, must pay that sum or sums to the claimant on behalf of the other Boards or Corporations.
- 3.7 The other Boards or Corporations must reimburse the Board or Corporation on whom the application is made, within one month beginning on the last day of the month in which the reimbursement was claimed.

4. Variation of Agreement

- 4.1 This Agreement or any part thereof may be varied by mutual consent in writing by the Ministers; however subject to clause 4.2, the variation will only take effect upon an agreed date.
- 4.2 Where it is necessary for amendments to be effected to an Act to enable any party to give effect to any variation, then an agreement to vary this Agreement shall not have effect until such amendments are in force.

5. Consultation

- 5.1 The Boards or Corporations shall where practicable consult each other concerning any proposed change to their respective laws which if implemented would be likely to affect this Agreement, but shall not affect the sovereign right of the States or Territories.
- 5.2 In the event that a Board or Corporation is or becomes disadvantaged by the operation of this Agreement, the Boards and Corporations must enter into consultation concerning a possible variation to the Agreement in an endeavour to overcome the disadvantage.

6 Commencement

- 6.1 This Agreement will come into force and effect in all jurisdictions on the date of its execution or such other date when the Act in that jurisdiction enables the provisions of this Agreement to operate.

7. Termination of Agreement

- 7.1 A Board or Corporation may terminate its participation in this Agreement upon giving twelve months' notice in writing to the other Boards and Corporations of its intention to terminate.
- 7.2 If for any reason the enabling legislation for one of the parties precludes that party from continuing with this Agreement then this agreement will still remain valid for the remaining parties.