

Subject: **Exclusion of the long service levy on resources work**

References: *Construction Industry Long Service Leave and Benefits Act:*
Section 7 - Construction work
Section 32 - Imposition of the levy
Section 33 - Amount of levy
Section 37 - Cost of construction work

Construction Industry Long Service Leave and Benefits Regulations:
Regulation 2 - Imposition of levy
Regulation 3 - Amount of levy

Date of effect: The attached Guidance Note was adopted by the NT Build Board (Board) on 25 February 2015 (the Adoption Date).

This Guidance Note will only apply to projects that commence after the Adoption Date.

Policy: Consistent with the objectives of the Act the Board has developed the attached guidance notes to assist in determining the nature of work that is likely to fall within section 6 (1) and 6(2)(a) and (b) of the *Construction Contracts (Security of Payments) Act*.

NT Build does not seek to levy operational work on metalliferous or petroleum/gas/hydrocarbon fields and tenements. Some illustrative examples of works in the mining and oil and gas industries are set out in the attached Guidance Note.

This is intended as a guide only and is not intended to bind the Board to any particular action or decision about the nature of leviable construction work.

Date Authorised: 25 February 2015 **Date Reviewed:** 19 October 2022

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Guidance Note

Guidance Note on exclusion of the Northern Territory *Construction Industry Long Service Leave and Benefits Act* (the Act) on resources work (Guidance Note)

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1. PREAMBLE

This Guidance Note was adopted by the NT Build Board (Board) on 25 February 2015 (the Adoption Date). This Guidance Note will only apply to projects that commence after the Adoption Date.

NT Build does not seek to levy operational work on metalliferous or petroleum/gas/hydrocarbon fields and tenements. Some illustrative examples of operational work in the mining and oil and gas industries (collectively referred to as “resources industries”) are set out below.

2. PURPOSE AND NATURE OF THIS GUIDANCE NOTE

The Board has developed the following guidance notes to assist in determining the nature of work that is likely to fall within section 6(1) and 6(2)(a) and (b) of the *Construction Contracts (Security of Payments) Act*.

This Guidance Note is consistent with the objectives of the Act and does not override the Act. This Guidance Note provides general information and does not constitute legal advice or a definitive list of situations where the law applies.

- a) This Guidance Note is provided by the Board to assist levy payers in understanding what resources industries related work is leviable under the NT Build long service leave scheme (the LSL Scheme).
- b) This Guidance Note represents the Board’s assessment on work that is included and excluded from the levy.
- c) If after considering this Guidance Note, a person remains uncertain whether the work is leviable under the Act they should consult with NT Build.
- d) If discussions stemming from the consultation process cannot resolve the uncertainty, a levy payer may request an assessment under section 46 of the Act. This assessment will take account of the substantial character of the work being undertaken, this Guidance Note, the provisions of the Act, the location or locations at which works are performed and whether such works are directly connected with day-to-day operational activities associated with the resources facility.
- e) If the section 46 assessment does not resolve the question, a person may apply to the Board for reconsideration of that decision under Part 5, Division 4 of the Act. Where, following the Board’s reconsideration of its decision, a person remains unsatisfied with that decision or any subsequent decision made by the Board, a person may apply to the Local Court for a review of the Board’s decision.
- f) In this Guidance Note any reference to a tenement/tenancy is a reference to a title granting rights to undertake exploration activities or produce materials from a quarry, a metalliferous/hard rock mine or a petroleum/gas/hydrocarbon field.

3. APPLICATION TO THE MINING INDUSTRY

3.1 Overarching Principles:

- a) All mineral exploration activities are not leviable. These activities include, but are not limited to, access roads; land clearing for exploration; temporary camps; sampling; drilling; trenching; bulk sampling; metallurgical testing; ground and aerial surveys.

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- b) Construction activities associated with the installation of semi-permanent or permanent infrastructure directly related to a mine production facility are leviable. These activities include, but are not limited to, land clearing for processing infrastructure; and construction of hardstands, offices, workshops, weigh bridges, primary access roads, mine camp, airstrips (FIFO), fuel farms, crushing plants; processing plants; headframes and winders; power stations; primary power transmission lines, water storage dams and tailings dams.
 - c) Construction activities associated with the day to day operations of a mine production facility are not leviable. These activities include, but are not limited to, land clearing for operational activities; access road and haul road works within the project area; drainage works; establishment and operation of open cut pits; establishment and operation of underground workings (including drives, declines, adits, shafts, stopes, ventilation shafts, and conveyor belts below the portal); waste rock storage facilities; repair and maintenance of plant and equipment; safety, health & environment monitoring activities; and rehabilitation works necessary to be undertaken during the life of the mine production facility, to facilitate continuation of day to day operations.
 - d) Rehabilitation works associated with the closure of the mine production facility, to facilitate the return of the land to its pre-operations, natural state are leviable.
 - e) Shutdowns of fixed plant and equipment for maintenance, repairs or refurbishment are leviable, if the shutdown occurs for a period in excess of 30 days.

3.2 Examples

Example 1: Contractor providing earthmoving and haulage services

ABC Pty Ltd is an earthmoving and haulage contractor who since 1998 has been engaged in earth moving services across several industries. It has 60 workers engaged removing overburden, maintaining and repairing access roads, and hauling iron ore on an open cut mine in the Northern Territory over a 3 year contract.

Conclusion:

The work is not leviable. This is ongoing work performed on a mine tenement and is directly connected with the day to day operation of a mine.

Example 2: Labour Hire

123 Pty Ltd provides supplementary labour services to a number of companies in a range of industries, including a bauxite mine. Workers of 123 Pty Ltd are assigned to a bauxite mine on an ongoing basis and work within the mine operator's mining plan for the extraction and treatment of the bauxite and any by products.

Conclusion:

The work is not leviable. It is performed on a bauxite tenement for the extraction of and treatment of bauxite.

Example 3: Heavy Mining Machinery Supplier

DEF Pty Ltd is engaged in the business of manufacturing, sales, transporting and servicing heavy earthmoving and mine haulage equipment that is used in gold mines. DEF Pty Ltd has a contract with the mine operator that includes three main components:

- 1) The supply and assembly of heavy machinery on the mine site.

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- 2) The provision of a roving quality control/assurance service that is conducted out of its regional headquarters located some distance from the mine. The workers engaged in providing this service are predominantly based in the regional workshop.
 - 3) The provision of a permanent onsite maintenance crew consisting of diesel fitters, welders, mechanics and auto-electricians to repair and maintain the equipment it has supplied.

Conclusion:

- 1) The work of DEF Pty Ltd to deliver and assemble the heavy equipment being supplied to the mine operator and the roving quality control work is not construction work, and therefore is outside the scope of the NT Build Scheme and is not leviable.
- 2) The work of DEF Pty Ltd to maintain the mine operator's equipment relates to the day to day operation of a mine and is not leviable.

Example 4: Conveyor construction work

789 Pty Ltd is a well-known heavy engineering contractor. It is engaged in engineering construction work in a range of industries including mining, gas processing, oil refining, smelters and power stations.

789 Pty Ltd obtains a contract to construct a new above ground conveyor system at a mine. The project will take approximately 8 months and will involve more than 40 workers at its peak.

Conclusion:

The work of 789 Pty Ltd relates to the installation of permanent infrastructure directly related to a mine and is leviable.

Example 5: Construction of underground conveyor system

JKL Pty Ltd is a mine services company that provides mining services to a number of customers in hard rock mining industries.

The company has 40 workers engaged in mining activities including driving the drift and the erection of an underground conveyor belt, extending beyond the portal to a stockpile area. It has 10 workers who are engaged at various times in surface erection of that conveyor belt from the portal to a stockpile.

Conclusion:

The work relates to underground works associated with the day to day operation of a mine and is not leviable.

Example 6: Construction of a quarry

QRS Pty Ltd has recently constructed, and now operates, a number of permanent and temporary quarries in the Northern Territory including:

- 1) a large, permanent quarry for quarried stone at a site in the Mary River region; and
- 2) a temporary borrow pit used to supply a railroad contractor engaged to create railroad embankments for the Darwin to Alice Springs railway.

Conclusion:

In relation to the permanent quarry:

- 1) Construction of the infrastructure, such as weigh bridges, office and crib facilities etc is leviable.
- 2) Construction of the quarry itself is not construction work and is not leviable.
- 3) Activities associated with the day to day operation of the permanent quarry are not leviable.

In relation to the temporary borrow pit, construction of the borrow pit and its operation is leviable.

Example 7: Accommodation for a new mine

XYZ Pty Ltd is a camp services company that provides preparatory work, temporary and permanent accommodation, and mine services to a number of customers in the mining industry.

XYZ Pty Ltd obtains a contract to construct and then operate site offices and camp facilities at a new mine. The project will take approximately 6 months and will involve 90 workers at its height.

Conclusion:

The work of XYZ Pty Ltd on erection of the camp involves construction activities associated with the installation of semi-permanent infrastructure directly related to a mine production facility and is leviable. Operation of the site offices and camp facilities involve activities associated with the day to day operation of the mine and is not leviable.

Example 8: Mine maintenance

ERB Pty Ltd operates a manganese mine which requires regular maintenance. ERB Pty Ltd enters into a 3 year maintenance contract with MCA Pty Ltd to perform routine maintenance of the facility. Maintenance or breakdown of the equipment can cause the mine to temporarily shut down (for periods less than 30 days).

Conclusion:

Regular, programmed operational maintenance of fixed plant and equipment and unplanned breakdown work including where that involves shutdowns of up to 30 days are classified as activities associated with the day to day operation of the mine and are not leviable.

Example 9: Fixed plant shutdown

ERB Pty Ltd is required to do OEM and/or statutory shutdowns on the processing facility on a periodic and planned basis. These shutdowns are scheduled to continue for a period in excess of 30 actual worked days. ERB Pty Ltd has contracted GNS Pty Ltd to carry out a planned OEM shutdown on the processing facility.

Conclusion:

This is a shutdown scheduled for a period in excess of 30 days performed on fixed plant and equipment, and is leviable.

Example 10: Land clearing for infrastructure construction

MNO Pty Ltd is developing a mine and enters into a contract with PQR Pty Ltd for the clearing of an access road, construction pad, and the mining and industrial area in preparation for construction.

Conclusion:

This involves construction activity associated with the installation of permanent infrastructure directly related to a mine production facility and is leviable.

Example 11: Land clearing for mining activities

LC Pty Ltd has been engaged to carry out clearing and grubbing of vegetation ahead of mining activities at a mine.

Conclusion

Land and/or vegetation clearing and grubbing ahead of mining activities is an activity associated with the day to day operation of the mine and is not leviable.

4. APPLICATION TO OIL AND GAS INDUSTRY

4.1 Overarching Principles:

- a) All upstream oil and gas operations are not leviable.
 - i. Upstream oil and gas operations are defined as being all activities and infrastructure related to the exploration, development and production of petroleum/gas/hydrocarbon products, upstream of but not including processing facilities which convert raw gas and petroleum liquids into sales products ready for transport to markets.
 - ii. The point at which upstream oil and gas operations cease is defined as being the first control valve located within the perimeter of the processing facility.
 - iii. Upstream oil and gas operations include activities and infrastructure that are ancillary to, or are undertaken or installed in connection with, exploration and production activities.
 - iv. The operation, repair and maintenance of facilities forming part of the upstream oil and gas operations are not leviable.
- b) The construction of oil and gas processing facilities downstream of the upstream oil and gas operations, and semi-permanent or permanent infrastructure required for the construction or operation of a processing facility are leviable.
- c) The operation, repair and maintenance of processing and other oil and gas facilities downstream from the upstream oil and gas operations and associated infrastructure are not leviable, other than shutdowns. A shutdown means carrying out substantial maintenance or repair work that results in the cessation of oil or gas production if:
 - i. the cessation is for at least 30 days; and
 - ii. at least 30 days is required to complete the maintenance or repairs not including the time required to complete preparatory and post-maintenance activities (including isolations and decontamination and testing for start-up readiness).

4.2 Examples

Example 1: Exploration and production of petroleum products

TMI Pty Ltd has several petroleum tenements over an area of land in the Northern Territory. Petroleum exploration activities are being undertaken on the tenements. In addition, petroleum production facilities and pipelines transporting hydrocarbons to a processing plant and liquids terminal are being developed. The activities include:

- 1) seismic surveying and the civil works required to clear access tracks and survey lines;
- 2) the construction, operation and maintenance of work camps for use by exploration, upstream construction and production crews (including the associated civil works);
- 3) purchasing, contracting and mobilising mobile plant and equipment for use in exploration and production activities and the development and operation of associated infrastructure required to support those activities (such as access tracks);
- 4) maintaining or repairing mobile plant and equipment used in exploration, production and decommissioning activities and in the maintenance of infrastructure;
- 5) ancillary or incidental generation, supply or transmission of electric power required for exploration and production activities and associated infrastructure;
- 6) site works and the installation and operation of well drilling and well stimulation equipment;
- 7) construction of water storage tanks and evaporation ponds; for use in exploration and production activities
- 8) installing petroleum production facilities including wellheads, oil and gas gathering pipelines, pipeline compression facilities and liquids storage tanks and load-out facilities;
- 9) the construction and maintenance of roads and tracks in and around the tenement that are required to provide access to exploration sites, production facilities and associated infrastructure, and;
- 10) land clearing and rehabilitation work on areas disturbed during exploration and production activities.

Conclusion:

All of these activities and infrastructure form part of upstream petroleum operations so are not leviable.

Example 2: Electrical contractor on shutdown

456 Pty Ltd is an electrical contractor based in a major regional centre working across several industries on time based contracts. One such contract involves electrical shutdown repairs to a gas processing plant located on a gas tenement and operated by the owner. The contract involves approximately five weeks of work for 60 workers (not including preparatory and post-maintenance activities) while the plant is shutdown.

Conclusion:

This work falls within the definition of a shutdown and is leviable.

Example 3: Land access and clearances

TUV Pty Ltd has a gas tenement over an area of land outside of Katherine. TUV Pty Ltd engages 202 Pty Ltd to do all cultural and historical heritage surveys and clearances for the site.

Conclusion:

This is not leviabale.

Example 4: Exploration camp

PQR Pty Ltd is a camp services company that installs and manages temporary and permanent office and accommodation facilities for resources projects and other clients.

PQR Pty Ltd obtains a contract to install and operate temporary site offices and accommodation facilities for use by workers undertaking petroleum exploration activities. This includes the provision of site works and services such as electricity, water and sewerage.

Conclusion:

PQR Pty Ltd is installing and operating infrastructure required for upstream petroleum operations so this work is not leviabale.

Example 5: Construction camp for a gas plant

PQR Pty Ltd is also engaged to construct and operate offices and camp facilities for use by workers building a new gas processing plant from which LNG is exported and domestic gas is sold into the NT gas market. RUF Pty Ltd is contracted to build a service road from the nearest public road to the construction camp and gas plant.

Conclusion:

PQR Pty Ltd and RUF Pty Ltd are building infrastructure required for the construction and/or operation of downstream hydrocarbon processing facilities so construction of the offices, camp and road are leviabale. Day to day operation and maintenance of the downstream offices, camp and roads are not leviabale.

Example 6: Hydrocarbon extraction maintenance

GHI Ltd are installing wells and gathering pipes to extract gas from their tenement near Tennant Creek in the Northern Territory. They undertake a 2 year contract with HD Pty Ltd to carry out routine maintenance, repairs and upgrades on all wells, pipelines and other related facilities at well sites.

Conclusion:

The ongoing routine servicing, maintaining, repairing and upgrade (including structural, mechanical, electrical, fabricating or engineering) of fixed facilities, plant and equipment used to extract hydrocarbons form part of upstream petroleum operations so are not leviabale.

Example 7: Integrated oil and gas project

LNG Pty Ltd is developing hydrocarbon production facilities in offshore waters, an onshore oil and gas processing plant, and a pipeline to transport hydrocarbons from the offshore facilities to the onshore plant. The onshore plant is located as close as possible to the coast so as to access shipping facilities. A pipeline operator, APG Pty Ltd is building a gas transmission pipeline to transport gas from the processing plant to customers in Darwin.

Conclusion:

Construction of the onshore processing plant and the gas transmission pipeline taking gas from the processing plant to markets, are subject to the levy. The offshore production facilities and the pipeline to the onshore processing plant, including those parts that pass through NT coastal waters and over land, are not leviable as the point at which activities become leviable is the first control valve within the perimeter of the processing facility.

5. CONTACTS FOR FURTHER INFORMATION AND ENQUIRIES

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