

idas Implementation Note

idas Integrated Development
Assessment System

Number
34

Portable Long Service Leave Levy and IDAS



The *Workcover Queensland and Other Acts Amendment Act 2000* was assented to on the 24 September 2000. This Act included amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* which have impacts on operational work and building work applications.

The Amendments:

The Workcover Queensland and Other Acts Amendment Act 2000 amended three Acts, being the *Workcover Queensland Act 1996*, the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (BCIPLSLA) and the *Industrial Relations Act 1999*. The amendments to the BCIPLSLA are the focus of this implementation note as they impact on IPA and the IDAS process in particular.

The pertinent amendments to the BCIPLSLA include:

- Redefining the “**building and construction industry**” so that the concepts of deconstructing and relocating are included. It is also expanded to include new types of works into the definition (spa pools and swimming pools; works for solid waste disposals; works for subdividing land; works for flood mitigation; works for conveying products, by-products or materials; earthworks, landclearing, fencing and site preparation other than for farming; and any other structure, fixtures or other works not captured by any of the other descriptions of work). [New section 3AA].
- Increased penalties for non-compliance with the requirements of the Act (generally from 16 penalty units to 40 penalty units note: a penalty unit is currently approximately \$70). [Sections 67 and 68].
- An expanded definition of the “**cost**” of building and construction work to include all costs that relate to the work directly or indirectly (including design, project management and consultancies) as opposed to the previous definition which was tied to the contract price. [Section 73].
- Changing the timing of the payment of the levy from prior to the lodgment of an IDAS application to prior to an approval being issued. [Section 75].
- Requirements for an assessment manager for an IDAS building work or operational work application (this will also apply to plumbing and drainage work when it is integrated into the IDAS process) to view a copy of the approved form issued by QLeave which signifies that the portable long service levy has been paid for the works being approved prior to issuing the development permit for the work and an increased penalty for private certifiers that do not comply with this requirement (from 16 penalty units to 40 penalty units). [Section 77].

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The Effect of the Amendments:Expanded definitions of building and construction work:

These amendments have increased the ambit of works for which the payment of the levy is required. The inclusion of works such as those required for the subdivision of land and landclearing are a significant variation from the previous definition. The approval process for these types of works is often broken down into several applications and it will be important for assessment managers to record the payment for each of these components.

These amendments also change the assessing entities responsible for ensuring the levy has been paid. Before IPA, building surveyors (employed by local government's) were required to check that the levy had been paid. After IPA commenced this role was required to be carried out by all building certifiers (private or Council employed). The expansion of the definitions of "building and construction work" and the new requirement for the assessment manager for all IDAS building and operational work applications to view the approved form has dramatically increased the number and type of assessing entities effected. Sections of local governments that have not previously had to deal with this issue (such as those assessing engineering or landscape plans) and State agencies (such as the Department of Natural Resources and Mines for vegetation clearing) now have this responsibility under the BCIPSLA.

Expanded definition of costs:

The expanded definition of costs includes the design and project management components of building and construction work. These costs, especially the design costs for multi-stage subdivisional works, may have been expended several years prior to the deciding of any application and must be reflected in the levy payment calculation. Situations where design solutions are proposed and subsequently rejected, significantly amended or a change in consultant occurs are not clearly dealt with. The Department is seeking clarification from QLeave on this matter.

Changed timing of payment:

The timing of the payment of the levy has been moved from prior to lodgement of the IDAS application (for building work only) to prior to issuing a development permit for the expanded range of works. This was done to bring the timing of the payment closer to the commencement of the works. If an IDAS application is not required the payment is not due until prior to the commencement of work.

The BCIPSLA requires that the assessment manager not "give" (or issue) the development permit for these works until the applicant has provided a copy of the approved form indicating that the levy has been paid. As this requirement does not change the IDAS timeframe in which the assessment manager must make the decision, the assessing entity can be left in a situation where IPA requires them to issue the development permit however, due to the actions of the applicant (not providing a copy of the approved form) they are prevented from issuing the development permit by the BCIPSLA.

This situation is obviously one to be avoided however, should an assessing entity find itself in such a position, the Departments current advice is that the assessment manager should carryout the assessment and make the decision within the IPA timeframes. They should not however, issue the development permit and should clearly state to the applicant the reason for the delay. If the applicant wishes to go to the expense of lodging an appeal to the P&E Court or Building Tribunal against a deemed refusal the assessment manager would be in a position to state that they had

met all of their legislated responsibilities other than those which they were prevented from carrying out by the applicant's inaction. Applicants should be aware of their responsibility in this area and should provide a copy of the appropriate documentation prior to the end of the decision stage.

The department understands some assessment managers have required this documentation as part of an information request for the application. The information request is an opportunity for the assessment manager to seek further information required for the assessment of the application. The requirements of the BCIPSLA do not fit this description and have no effect on the assessing entity's ability to make a decision. An applicant in receipt of an information request that included this requirement could, on this basis, ignore that component of the information request.

Where To From Here:

A key concept of IPA was that all of the assessment related requirements and provisions would be in a single piece of legislation. The provisions in the BCIPSLA run counter to that concept. To address this issue and the issues raised in the above sections, the Department has commenced discussions on amendments to the BCIPSLA and IPA to remove the ambiguity and confusion caused by these changes. Any proposed changes will be discussed with the key stakeholders during the formulation process.