

Subject: **Predominance Test for Scheme Eligibility and Carrying Out Construction Work – 50% On Site and On Tools**

References: CILSB Act Section 10: Application for registration
CILSB Act Section 15: Qualifying service
Construction Contracts
(Security of Payments)
Act 2004, Section 6: Construction work
CILSB Determinations,
Determination 3(2): Application for registration

Policy:

This policy is aimed at clarifying and confirming NT Build's historical and current approach to determining employee/contractor eligibility for registration and qualifying service.

NT Build's communication materials (such as the extract below from the worker registration fact sheet) specify that to be eligible, amongst other things, a worker must work on a construction site for greater than 50% of their time.

Eligibility

To be eligible for registration under the Scheme a worker must:

- Be employed to carry out construction work in the Northern Territory;
- Work on a construction site for greater than 50% of their time;
- Work in the private sector (ie: not for the government); and
- Not be working in an administrative, clerical, managerial or professional capacity.

Workers employed full-time, part-time, as a casual, or as a labour only contractor are eligible to register.

Construction work

For the purposes of the Scheme, construction work includes commercial, domestic, industrial and civil construction, and covers (among other things) reclamation, earthmoving, landscaping, repair, maintenance, extension and demolition work.

This is also included in the 'Request to Investigate Unregistered Service' form which requests the worker advise NT Build if they are on site and on the tools 50% or

more of the time which determines if the worker is eligible to have that service recognised.

The On Site Requirement

This is a legislated requirement.

Specifically, the *Construction industry Long Service Leave and Benefits Act 2005* (CILSB Act) provides that the term ‘*construction work*’ has the same meaning as section 6 of the *Construction Contracts (Security of Payments) Act 2004*. Section 6 specifies the type of work that is deemed to be construction work, provided that it is undertaken ‘on site’.

In addition section 7(3) of the same Act states that, ‘*onsite services are related to construction work if they are services (other than professional services):*

- (a) that relate directly to construction work, including providing labour to carry out construction work; or*
- (b) prescribed by Regulations to be onsite services related to construction work.’*

Carrying Out Construction Work

One of the key eligibility requirements for registration and also for reporting days of service as an employee or contractor, is that an employee or contractor is either employed or engaged to ‘carry out’ construction work.

The Board considers that an employee or contractor can only ‘carry out’ those things which are defined as ‘construction work’ in section 6 of the *Construction Contracts (Security of Payments) Act 2004* by actually doing them (ie. working on the tools). Furthermore, the Board also considers that it is not likely that a employee or contractor can be said to be employed or engaged to carry out construction work if the actual construction work being undertaken is not a substantial part of their employment or engagement. The Board’s policy interpretation and policy position is also informed by and consistent with the intention and objectives of the CILSB Act.

Predominance Test – 50% On Site and On Tools

The predominance test (ie. 50% on site and on tools) should be utilised as means of determining:

- worker/contractor eligibility for registration; and
- qualifying service.

This is determined in practice by the Registrar and based on the information provided by the employee /contractor and/or the relevant employer.

It should be noted that the *Construction Industry Long Service Leave and Benefit Determinations 2005* provides for specific exclusions at Determination 3:

- (2) Construction work carried out by a person is excluded for section 10(1)(c)(ii) of the Act if:
 - (a) the work involves the fabrication of components or manufacture of any other materials for installation; and
 - (b) on average, the person spends less than 50% of his or her work time at the construction site for the work.
- (3) Construction work carried out by a person is excluded for section 10(1)(c)(ii) of the Act if the person is primarily employed or engaged to transport people or goods to or from the construction site for the work.

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