

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

**CONSTRUCTION INDUSTRY LONG SERVICE LEAVE
(MISCELLANEOUS) AMENDMENT ACT 2000**

No. 83 of 2000

[Assented to 14 December 2000]

An Act to amend the Construction Industry Long Service Leave Act 1987.

SUMMARY OF PROVISIONS

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 2000*.

(2) The *Construction Industry Long Service Leave Act 1987* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended by inserting the following definition after the definition of "ordinary weekly pay" in subsection (1):

"the prescribed period" means—

- (a) in reference to a person who has an effective service entitlement of less than 1 300 days—24 months;
- (b) in reference to a person who has an effective service entitlement of 1 300 days or more—36 months;.

Amendment of s. 5—Application of this Act

4. Section 5 of the principal Act is amended—

(a) by inserting the following subsection after subsection (2a):

(2b) Despite subsection (1aa), Parts 3 and 5 do not apply to a person's employment (and consequently the person is not a construction worker for the purposes of those Parts) if the person's employer is a body corporate and the person is a director of that body corporate.;

(b) by inserting the following definition before the definition of "relevant association" in subsection (6):

"director" of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;.

Amendment of s. 14—Effective service entitlement**5. Section 14 of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsection:

(2) A person will be credited with one day of effective service—

(a) for each day that he or she works as a construction worker; and

(b) for each day of a period of allowable absence,

(and the aggregate of those days of effective service will be the worker's aggregate effective service entitlement).;

(b) by striking out paragraph (b) of subsection (4) and substituting the following paragraph:

(b) the construction worker has not previously had an effective service entitlement of 2 600 days or more;;

(c) by striking out "of 36 months or more" from paragraph (c) of subsection (4) and substituting "that is equal to, or longer than, the prescribed period".

Amendment of s. 17—Cessation of employment

6. Section 17 of the principal Act is amended by striking out subparagraph (ii) of paragraph (a) of subsection (1) and substituting the following subparagraph:

(ii) a construction worker has attained an effective service entitlement of less than 1 820 days and has previously had an effective service entitlement of 2 600 days or more;.

Amendment of s. 18—Preservation of entitlements in certain cases

7. Section 18 of the principal Act is amended by striking out "36 months" from paragraph (c) of subsection (1) and substituting "the prescribed period".

Amendment of s 37A—Self-employed contractors and working directors**8. Section 37A of the principal Act is amended—**

(a) by striking out subsection (1) and substituting the following subsections:

(1) This section applies to—

(a) a self-employed contractor in the construction industry; and

(b) a person who is employed under a contract of service in the construction industry by a body corporate of which he or she is a director.

(1a) A person to whom this section applies may, on application to the Board in a form approved by the Board, be registered by the Board under this section.;

(b) by striking out "contractor" from subsection (2) and substituting "person";

(c) by striking out subsection (3) and substituting the following subsections:

(3) If, in the case of a self-employed contractor—

- (a) the contractor had previously been a construction worker; and
- (b) he or she was not entitled to long service leave or a payment for *pro rata* long service leave when he or she ceased work as a construction worker; and
- (c) he or she commenced work as a self-employed contractor in the construction industry within the prescribed period after cessation of his or her employment as a construction worker; and
- (d) the application for registration under this section was made within six months after commencing work as a self-employed contractor in the construction industry (or within such longer period as the Board may, in its absolute discretion, allow),

any effective service entitlement is preserved on registration.

(3a) If—

- (a) a person who applies for registration under subsection (1a) was—
 - (i) a director to whom this section applies at the commencement of the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 2000*; or
 - (ii) a construction worker immediately before becoming a director to whom this section applies; and
- (b) the application for registration was made within six months after the commencement of that Act or the date on which the person became a director (as the case requires),

any effective service entitlement in respect of that person immediately before the commencement of that Act or the time at which he or she became a director is preserved on registration.

(3b) If—

- (a) a person was not entitled to long service leave or a payment for *pro rata* long service leave when he or she ceased work as a construction worker; and
- (b) within the prescribed period after ceasing work as a construction worker he or she becomes a director to whom this section applies; and
- (c) he or she applies for registration under this section within six months after becoming a director (or within such longer period as the Board may, in its absolute discretion, allow),

any effective service entitlement is preserved on registration.;

- (d) by inserting after "a registered contractor" first occurring in paragraph (b) of subsection (4) "or the employer of a director to whom this section applies";
- (e) by striking out "a registered contractor" second occurring in paragraph (b) of subsection (4) and substituting "a contractor or employer";
- (f) by striking out "contractor" from paragraph (c) of subsection (4) and substituting "person";
- (g) by striking out "contractor" from subsection (6) and substituting "person";
- (h) by striking out "contractor's" from the definitions of "OWP" and "CI" in subsection (6) and substituting, in each case, "person's";
- (i) by inserting after "subsection (3)" in the definition of "D" in subsection (6) ", (3a) or (3b)";
- (j) by striking out "contractor" wherever occurring in subsection (7) and substituting, in each case, "person";
- (k) by inserting after "subsection (3)" in subparagraph (i) of paragraph (a) of subsection (7) ", (3a) or (3b)";
- (l) by striking out "contractor" wherever occurring in subsection (8) and substituting, in each case, "person";
- (m) by striking out "contractor's" wherever occurring in the definitions of "OWP", "D" and "C" in subsection (8) and substituting, in each case, "person's";
- (n) by striking out "subsection (3)" twice occurring in the definition of "D" in subsection (8) and substituting, in each case, "subsection (3), (3a) or (3b)";
- (o) by inserting the following subsections after subsection (9):
 - (10) If a registered person—
 - (a) ceases to be a self-employed contractor in the construction industry or a director to whom this section applies; and
 - (b) does not have an entitlement under subsection (6) or (7); and
 - (c) has not received and will not be receiving a payment from the Board under subsection (8); and
 - (d) has become (or has become again) a person to whose employment this Act applies (*see* section 5) within the prescribed period after ceasing to be a self-employed contractor or a director to whom this section applies (as the case requires),

the effective service entitlement accrued under this section together with the effective service entitlement (if any) preserved under subsection (3), (3a) or (3b) will be credited to the person for the purposes of Part 3.

(11) In this section—

"director" of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the director or members of the governing body of the body corporate are accustomed to act;

"director to whom this section applies" means a person referred to in subsection (1)(b);

"registered person" means a person registered by the Board under subsection (1a).