



ANNO VICESIMO QUINTO

# ELIZABETHAE II REGINAE

A.D. 1976

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## No. 87 of 1976

An Act to amend the Long Service Leave (Building Industry) Act, 1975.

[Assented to 9th December, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short titles.**

1. (1) This Act may be cited as the "Long Service Leave (Building Industry) Act Amendment Act, 1976".

(2) The Long Service Leave (Building Industry) Act, 1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Long Service Leave (Building Industry) Act, 1975-1976".

**Commencement.**

2. This Act shall come into operation on the first day of April, 1977.

**Amendment of principal Act, s. 3—Arrangement of Act.**

3. Section 3 of the principal Act is amended by inserting after the passage "PART IV—CONTRIBUTIONS AND BENEFITS" the passage "PART IVA—APPEALS".

**Amendment of principal Act, s. 4—Definitions.**

4. Section 4 of the principal Act is amended—

(a) by inserting in the definition of "effective service" after the passage "section 29" the passage ", section 29a";

(b) by inserting after the definition of "ordinary pay" the following definition:—

"the Tribunal" means the Tribunal established under section 36a of this Act;

(c) by inserting in paragraph (a) of the definition of "worker" after the passage "having been made" the passage "or any registered agreement from time to time registered or having been registered";

(d) by inserting in paragraph (b) of the definition of "worker" after the passage "bridge and wharf carpenter," the passage "carpenter,";

- (e) by inserting in paragraph (b) of the definition of "worker" after the word "slater" the passage "sprinkler pipe fitter";
- and
- (f) by striking out from paragraph (d) of the definition of "worker" the word and symbol "supervisor,".

5. Section 22 of the principal Act is amended—

Amendment of  
principal Act,  
s. 22—  
Returns.

- (a) by striking out from subsection (1) the word "Commissioner" and inserting in lieu thereof the word "Board";
- (b) by striking out from subsection (1) the passage "containing such particulars as are prescribed from time to time by the Board";
- and
- (c) by striking out from subsection (2) the word "Commissioner" and inserting in lieu thereof the word "Board".

6. Section 24 of the principal Act is amended—

Amendment of  
principal Act,  
s. 24—  
Contributions  
of employers.

- (a) by striking out from subsection (2) the passage "shown on that return" and inserting in lieu thereof the passage "paid by him to his workers in respect of the period to which the return relates";
- and
- (b) by striking out from subsection (3) the passage "this section" and inserting in lieu thereof the passage "this Act".

7. The following sections are enacted and inserted in the principal Act immediately after section 24 thereof:—

Enactment of  
ss. 24a, 24b,  
24c and 24d of  
principal Act—

24a. (1) The Commissioner may, by notice in writing, require any person whom he suspects may be liable to make contributions under this Act to furnish to him, within the time specified in the notice, such return or such further return as the Commissioner requires.

Further  
returns.

(2) A person shall not fail to comply with a requirement addressed to him under subsection (1) of this section.

Penalty: Two hundred dollars.

24b. (1) The Commissioner may, by notice in writing, require any person—

Power to  
obtain  
information  
and evidence.

(a) to furnish him with such information as he requires;

or

(b) to attend and give evidence before him,

for the purpose of inquiring into or ascertaining an employer's liability under any of the provisions of this Act, and may require that person to produce all books, records, papers and documents in his custody or under his control relating to that liability.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, and for that purpose he may administer an oath.

(3) A person shall not fail to comply with a requirement addressed to him under this section.

Penalty: Two hundred dollars.

**Assessments.**

24c. (1) Where—

(a) any employer fails or neglects to furnish any return as and when required by this Act or the Commissioner;

(b) the Commissioner is not satisfied with the return made by any employer;

or

(c) the Commissioner has reason to believe or suspect that any employer (though he may not have furnished any return) is liable to make contributions under this Act,

the Commissioner may cause an assessment to be made of the total of the wages paid by the employer and that employer shall, subject to section 36b of this Act, be liable to pay to the Commissioner as a contribution the sum equal to the prescribed percentage of the amount of that assessment.

(2) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the contribution to be given to the employer liable to make that payment.

(3) The amount of contribution specified in the notice shall be payable on or before the date specified in the notice.

**Recovery of contributions.**

24d. (1) A contribution shall when it becomes due and payable be deemed to be a debt due to the Board and payable to the Commissioner.

(2) Any unpaid contribution may be sued for and recovered in any court of competent jurisdiction by the Commissioner of Stamps suing in his official capacity.

**Amendment of principal Act, s. 29—  
Service within the meaning of the Long Service Leave Act.**

8. Section 29 of the principal Act is amended by inserting in subsection (2) after the passage “of this section” the passage “and of section 29a of this Act”.

**Enactment of s. 29a of principal Act—**

9. The following section is enacted and inserted in the principal Act immediately after section 29 thereof:—

**Additional effective service.**

29a. (1) Where a worker satisfies the Board that—

(a) he became a worker on or before the first day of October, 1977;

(b) he had been employed by an employer in the industry at some time during the period of six months immediately preceding the day on which he became a worker;

and

- (c) on or after the first day of October, 1976, he ceased to be employed by any employer (in this Act referred to as "a former employer") in the industry and that immediately prior to that cessation he had service with that former employer being service that had it continued and this Act had not been passed may have entitled that worker to a grant of long service leave or payment in lieu thereof pursuant to the Long Service Leave Act, 1967-1972, not being service in respect of which he is entitled to receive any such grant or payment,

the Board shall issue to that worker a certificate in the prescribed form evidencing the amount of effective service determined to be effective service in accordance with subsection (2) of section 29 of this Act in relation to that service with that former employer.

**10. Section 30 of the principal Act is amended—**

- (a) by inserting in subsection (1) after the passage "section 29" the passage "or section 29a";
- (b) by inserting in subsection (1) after the passage "the employer" the passage "or former employer as the case may be";
- (c) by inserting in subsection (2) after the passage "an employer" the passage "or a former employer";

and

- (d) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) The Commissioner may by agreement with the employer or former employer accept payments in discharge of the liability under this section of the employer or former employer by instalments over a period not exceeding five years.

Amendment of  
principal Act,  
s. 30—  
Liability of  
employer, etc.,  
in relation to  
effective  
service.

**11. The following Part, heading and sections are enacted and inserted in the principal Act immediately after section 36 thereof:—**

Enactment of  
Part IVA of  
principal Act—

**PART IVA**

**APPEALS**

36a. (1) For the purposes of this Part, there shall be a tribunal entitled the "Appeal Tribunal".

The Appeal  
Tribunal.

(2) The Tribunal shall be constituted of a person having professional qualifications in accountancy appointed by the Governor.

(3) Subject to this Part, the person constituting the Tribunal shall be appointed for a term of office of three years and upon the expiration of his term of office shall be eligible for re-appointment.

(4) The Governor may remove the person constituting the Tribunal from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;

(c) dishonourable conduct;

or

(d) any other cause considered sufficient by the Governor.

(5) The office of the person constituting the Tribunal shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

(d) he is removed from office by the Governor pursuant to subsection (4) of this section.

(6) No liability shall attach to the Tribunal for any act or omission by it in good faith and in the exercise or purported exercise of its powers or functions.

(7) The person constituting the Tribunal shall be entitled to receive such allowances and expenses as may from time to time be determined by the Governor.

Appeal to  
Tribunal.

36b. (1) An employer aggrieved by an assessment of the Commissioner under section 24c of this Act may within thirty days of receiving notice of that assessment in the prescribed manner and form appeal to the Tribunal.

(2) On appeal the Tribunal may—

(a) dismiss the appeal and uphold the assessment appealed against;

(b) quash the assessment and thereupon the assessment shall be deemed never to have had any force or effect;

(c) vary the assessment and thereupon the assessment shall have effect as varied.

Practice and  
procedure.

36c. The Governor may make regulations providing for or prescribing any matter or thing in relation to the practice or procedure of the Tribunal.

Effect of  
pending appeal.

36d. (1) The fact that an appeal is pending shall not affect any assessment and a contribution may be recovered on that assessment as if no appeal were pending.

(2) If an assessment is varied on appeal, an adjustment shall be made for which purposes amounts paid in excess shall be refunded by the Commissioner and amounts short paid shall be recoverable by the Commissioner as a debt due to him.

Enactment of  
s. 42a of  
principal Act—

**12.** The following section is enacted and inserted in the principal Act immediately after section 42 thereof:—

Evidentiary  
provisions.

42a. (1) In any proceedings under this Act, a certificate purporting to be signed by the Commissioner certifying that—

(a) the employer named in the certificate was liable to pay a contribution in respect of the period specified in the certificate;

- (b) an assessment of the amount of the wages was duly made;
- (c) the particulars of the assessment are as stated in the certificate;
- (d) notice of the assessment was duly served upon the employer;

or

- (e) the amount specified in the certificate was at the date of the certificate payable by the employer named in the certificate,

shall, in the absence of proof to the contrary, be taken as proof of the facts stated in the certificate.

(2) In any proceedings under this Act, a certificate in writing purporting to be signed by the Commissioner certifying that the return has not been received from that person by any person authorized by the Commissioner to receive returns at the place where the return should have been furnished shall, in the absence of proof to the contrary, be taken as proof that the defendant has failed to furnish the return.

(3) In any proceedings against a person for failing or neglecting duly to furnish the Commissioner with any information required by the Commissioner under section 24b of this Act, a certificate purporting to be signed by the Commissioner certifying that—

- (a) the defendant was so required to furnish the Commissioner with the information of the nature specified in the certificate;

and

- (b) the defendant failed or neglected duly to furnish the information as and when required by the Commissioner,

shall, in the absence of proof to the contrary, be taken as proof of the facts so certified.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. NICHOLLS, Governor