

LEGISLATIVE ASSEMBLY

Read 1^o 24 November 1981

(Brought in by Mr Ramsay and Mr Dixon)

A BILL

To amend the *Building Industry Long Service Leave Act 1975* and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act shall be called the *Building Industry Long Service Leave (Amendment) Act 1981*. Short title.

(2) In this Act the *Building Industry Long Service Leave Act 1975* is called the Principal Act. Principal Act No. 8693. Reprinted to No. 9122. Subsequently amended by Nos. 9355 and 9365.

10 (3) Except as provided by this Act, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

2. In section 4 (3) of the Principal Act after paragraph (a) there shall be inserted the following paragraph:

“(ab) all penalties recovered under this Act;”.

Amendment of No. 8693 s. 4. Penalties to be paid to Building Industry Long Service Leave Fund.

Amendment of
No. 8693.
New ss. 5A,
5B.

Power to
Board to
acquire and
manage land.

3. (1) After section 5 of the Principal Act there shall be inserted the following sections:

“5A. (1) The Board may with the consent of the Minister expend moneys standing to the credit of the Fund—

- (a) in purchasing land in Victoria; 5
- (b) in constructing buildings and carrying out other improvements on such land;
- (c) in repairing maintaining or altering any building on such land; and
- (d) in paying any outgoings incurred in connexion with the management of such land or buildings including salaries and other expenses in relation to persons employed under section 5B. 10

(2) Where any interest in land is acquired by the Board, the Board may— 15

- (a) grant leases (including sub-leases);
- (b) with the approval of the Minister sell the land; and
- (c) grant any easement in favour of any person over the land—

for such consideration and on such terms and conditions as it thinks fit. 20

(3) The whole or part of—

- (a) any land purchased; or
- (b) any building constructed or altered—

pursuant to sub-section (1) may be used by the Board in connexion with its powers duties and functions under this Act. 25

Power to
Board to
employ persons
to manage
land and
buildings.

5B. (1) The Board may employ such persons as it considers necessary for or in relation to the management of land or buildings referred to in section 5A and may at any time dismiss any such person.

(2) A person employed by the Board under sub-section (1) shall not be subject to the *Public Service Act 1974*.” 30

(2) The Principal Act shall be deemed to have been enacted as amended by this section.

Amendment of
No. 8693 s. 15.
Charge to
be based on
award rate of
pay where
that is more
than ordinary
pay.

4. Section 15 (2) of the Principal Act shall be amended as follows: 35

- (a) In paragraph (a) before the words “in respect of” there shall be inserted the words “subject to paragraph (ab)”;
- (b) The word “and” after paragraph (a) shall be repealed;
- (c) After

(c) After paragraph (a) there shall be inserted the following:

“(ab) in respect of a worker whose ordinary pay is less than the minimum rate of pay prescribed in the award applicable to the worker or in the case where there is no award applicable to the worker and his ordinary pay is less than the minimum rate of pay prescribed in the award most applicable to the type of building and construction work performed by the worker—the minimum rate of pay prescribed in the award; and”.

5. (1) Section 15 (3) of the Principal Act shall be amended as follows:

Amendment of No. 8693 s. 15. Charges to be paid in first three months of continuous service.

(a) Paragraph (a) shall be repealed;

(b) The word “or” at the end of paragraph (a) shall be repealed;

(c) In paragraph (b) the word “subsequent” shall be repealed;

(d) In paragraph (b) for the words “the worker” there shall be substituted the words “a worker”.

(2) Section 20 (5) of the Principal Act shall be repealed.

Amendment of No. 8693 s. 20. Consequential amendment.

6. (1) After section 15 (4) of the Principal Act there shall be inserted the following:

Amendment of No. 8693 s. 15.

“(5) Notwithstanding the preceding provisions of this section, a private employer is not required to pay a long service leave charge in respect of the employment before the month of March, 1982 of a worker engaged in shopfitting work to whose employment the provisions of the Carpenters and Joiners (Long Service Leave) Award 1964 applied before that date.”

(2) After section 25 (6) of the Principal Act there shall be inserted the following:

Amendment of No. 8693 s. 25.

“(7) Notwithstanding the preceding provisions of this section, a private employer is not entitled to be reimbursed from the Fund to the extent of any payment in respect of long service leave accrued or deemed to have accrued to a worker engaged in shopfitting work in respect of employment before 1 March 1982 where the provisions of the Carpenters and Joiners (Long Service Leave) Award 1964 applied to that employment before that date.”

(3) This section shall come into operation on 1 March 1982.

7. (1) After

Amendment of
No. 8693 s. 15C.

7. (1) After section 15B of the Principal Act there shall be inserted the following:

“15C. (1) Where immediately prior to the commencement of this section—

- (a) the provisions of the Carpenters and Joiners (Long Service Leave) Award 1964 applied to a worker engaged in shopfitting work; and
- (b) the worker had completed more than ten years' service within the meaning of the award and had accrued an entitlement to long service leave on or after 21 December 1973 or was eligible to be granted leave in advance under that award but had not taken the leave to which he was entitled or the advance leave for which he was eligible to be granted—

the employer of the worker shall pay to the Board a lump sum equivalent to that long service leave or leave in advance based on the worker's ordinary rate of pay at the date of commencement of this section.

(2) In this section “ordinary pay” has the same meaning as in section 16.

(3) Any lump sum payable to the Board under this section shall be deemed to be a long service charge for the purposes of Parts II. and VII. of this Act.”

(2) This section shall come into operation on 1 March 1982.

Amendment of
No. 8693.
New s. 15D.
Board may
estimate
charges.

8. Before the heading preceding section 16 of the Principal Act there shall be inserted the following section:

“15D. (1) Where from returns furnished pursuant to this Act or the Regulations or from such other information as satisfies the Board it appears to the Board—

- (a) that any work that has been performed (whether before or after the commencement of this section) is building and construction work;
- (b) that such work was performed by a worker for a private employer or a working sub-contractor or by a registered working sub-contractor not holding a certificate of non-applicability issued under section 13;
- (c) that such employer, working sub-contractor or registered working sub-contractor was liable to pay long service leave charges to the Board in respect of such work; and

(d) that

(d) that those long service leave charges have not been paid—
and where there is insufficient information available to the Board
to enable the amount of the long service leave charges due in respect
of such work to be calculated in accordance with section 15, the
5 Board may estimate and make an assessment of the amount of long
service leave charges that in its opinion are due from such employer,
working sub-contractor or registered working sub-contractor in
respect of such work.

10 (2) In making an assessment under sub-section (1) the Board
may have regard to the prevailing rates of pay for the type of work
which is the subject of the assessment at the time such work was
performed.

15 (3) The Board shall cause notice of any assessment made under
this section to be served on the employer, working sub-contractor
or registered working sub-contractor to whom the assessment
relates.

20 (4) The employer, working sub-contractor or registered working
sub-contractor to whom the assessment relates may within a period
of 28 days from the date of service of the notice referred to in
sub-section (3) lodge with the Board a notice in writing objecting
to the assessment and setting out the grounds of such objection.

(5) The Board shall consider every such objection and may
affirm or vary the assessment objected to.

25 (6) After considering any objection or, if there is no objection,
after the expiration of 28 days from the date of service of the notice
referred to in sub-section (3) the Board shall certify its assessment
and the assessment so certified shall be deemed to be the amount of
long service leave charges in respect of the relevant work due to
and recoverable by the Board in accordance with this Act.”

30 9. (1) Section 16 of the Principal Act shall be amended as
follows:

Rate of
pay as at
date of taking
leave.

35 (a) In sub-sections (1) and (5) for the expression “(if he dies
before the completion of the leave so taken) as at the
time of his death” there shall be substituted the
expression “as at the time of his death (as the case may
be)”;

40 (b) In paragraph (a) of section 16 (2) for the words “date
of the accrual to the worker or (his personal
representative) of the entitlement concerned” there
shall be substituted the words “date of the taking of
the leave by the worker or as at the time of his death
(as the case may be)”.

(2) The

(2) The provisions of section 16 (2) of the Principal Act that were in force immediately before 1 March 1980 shall continue to apply to a worker to whom any entitlement to long service leave or pay in lieu of long service leave had accrued on or before 31 January 1977 in all respects as if this Act had not been enacted.

5

(3) The provisions of this section shall be deemed to have come into operation on 1 March 1980.

Amendment of
No. 8693 s. 19.

10. (1) Section 19 (1) of the Principal Act shall be amended as follows:

Allowable
absences on
account of
work-related
injuries.

(a) Paragraph (e) shall be repealed;

10

Board to deem
service to
be continuous
in certain
cases.

(b) The word "or" following paragraph (k) shall be repealed;

(c) After paragraph (l) there shall be inserted the following word and paragraph:

“; or

(la) any interval between periods of employment exceeding nine months which the Board has deemed to be continuous service in the industry for the purposes of this section because of the special circumstances of the case.”

15

(2) In section 19 (3) of the Principal Act for the expression “paragraph (e) and paragraphs (f) to (l) inclusive” there shall be substituted the expression “paragraphs (f) to (la) inclusive”.

20

Consequential
Amendment.

(3) In section 20 (3) of the Principal Act for the expression “and (l)” there shall be substituted the expression “(l) and (la)”.

Amendment of
No. 8693
s. 21AA.

11. In section 21AA (2) of the Principal Act for paragraph (a) there shall be substituted the following paragraph:

25

Refund of
contribution for
working
sub-contractors.

“(a) on the completion by a working sub-contractor of fifteen years continuous service in the industry and thereafter on the completion of each additional five years of continuous service in the industry a refund of his total contributions for the relevant period together with interest thereon at the determined rate;”

30

Amendment of
No. 8693 s. 32.
Date of
Effect of
Determination.

12. For section 32 (5) of the Principal Act there shall be substituted the following sub-section:

35

“(5) The Board shall not specify as the date on which the determination is to take effect a date earlier than the first day upon which it considers that the relevant employer first employed workers to perform building and construction work.”

13. In

13. In section 38 of the Principal Act for the words “upon application therefor being made by the person entitled thereto within two years after the date of overpayment, refund to that person” there shall be substituted the words “within seven years after the date of overpayment, refund to the person entitled thereto”.

Amendment of
No. 8693 s. 38.
Refund of
charges.

14. In section 40 (2) (a) of the Principal Act after the words “magistrates’ court” there shall be inserted the words “as a civil debt recoverable summarily”.

Amendment of
No. 8693 s. 40.
Charges to be
recovered as
a civil debt by
summary
procedure.

15. Section 52 of the Principal Act shall be amended as follows:

10 (a) For the expression “52” there shall be substituted the expression “52. (1)”;

(b) After section 52 there shall be inserted the following sub-section:

15 (2) Regulations prescribing awards for the purpose of the definition of “building and construction work” in section 2 may refer to an award in force or existing at the time the regulation is made or may refer to the award as amended from time to time.’.

Amendment of
No. 8693 s. 52.