

# Construction Industry Long Service Leave (Amendment) Bill

No.

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# LEGISLATIVE ASSEMBLY

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Read 1° 30 October 1985

*(Brought in by Mr Crabb and Mr Walsh)*

## A BILL

to amend the *Construction Industry Long Service Leave Act 1983*  
and for other purposes.

### **Construction Industry Long Service Leave (Amendment) Act 1985**

The Parliament of Victoria enacts as follows:

#### **Purposes.**

1. The purposes of this Act are to—

- 5 (a) include lift installers in the construction industry long service leave scheme; and
- (b) enable the Minister to enter into reciprocal arrangements with Ministers in other States and Territories; and
- (c) amalgamate the Building Trades Fund and the Metal and Electrical Trades Fund; and
- 10 (d) make alterations to the administrative and legal procedures in the Principal Act; and
- (e) alter the Construction Industry Long Service Leave Board's investment powers; and
- 15 (f) provide that benefits which apply to workers are to apply to working sub-contractors; and
- (g) make other necessary amendments.

**Commencement.**

2. (1) This Act, other than sections 8 and 12, comes into operation on a day or days to be proclaimed.

(2) Sections 8 and 12 are deemed to have come into operation on the day on which section 1 of the Principal Act came into operation.

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**Principal Act.**

Act No. 9935.  
Subsequently  
amended by No.  
10087.

3. In this Act the *Construction Industry Long Service Leave Act 1983* is called the Principal Act.

**Introduction of Lift Installers into Scheme.**

4. (1) In paragraph (d) of the definition of "Construction industry" in section 3 (1) of the Principal Act the words "installation or" are repealed.

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(2) The Principal Act is to be construed as if the amendment effected by sub-section (1) had come into operation on the appointed day.

(3) If an employer has after the appointed day and before the commencement day made a payment which should have been by reason of the coming into operation of this section, made by the Board out of the Fund and which would have been authorized by this Act to have been made from that Fund the employer is entitled to be reimbursed from the Fund the amount of that payment.

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(4) If because of the coming into operation of this Act an employer should have paid contributions for that period between the appointed day and the commencement day the employer must make the contributions which he should have made within 60 days after the last day of the month in which this section commences.

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(5) In this section—

"Appointed day" is the day proclaimed as the appointed day for the purposes of section 24 of the Principal Act.

"Board" has the same meaning as in the Principal Act.

"Commencement day" is the day upon which this section commences.

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"Employer" has the same meaning as in the Principal Act.

"Fund" means the Metal and Electrical Trades Fund established under the Principal Act.

**Changes to Interpretations.**

5. Section 3 (1) of the Principal Act is amended as follows:

- (a) The interpretation of “Building Trades Fund” is repealed;  
(b) For the interpretation of “Funds” substitute the following interpretation:

‘ “Fund” means the Construction Industry Long Service Leave Fund established under section 9.’;

- (c) The interpretation of “Liquidator” is repealed;

- (d) The interpretation of “Metal and Electrical Trades Fund” is repealed;

- (e) After the interpretation of “Month” insert—

‘ “Officer” includes the Director and any Inspectors appointed under this Act.’.

**Change to words which do not import gender.**

6. In section 4 (3) (a) of the Principal Act for “Chairman” substitute “Chairperson”.

**Change to words which do not import gender.**

7. Section 6 of the Principal Act is amended as follows:

- (a) In sub-section (1) for “Chairman” substitute “Chairperson”;

- (b) In sub-section (3) for “Chairman” substitute “Chairperson”;

- (c) In sub-section (4) for “Chairman” substitute “Chairperson”.

**Insertion of new section 8A.**

8. After section 8 of the Principal Act insert—

**Delegations.**

- “8A. The Board may by instrument in writing delegate any one or more of its powers under this Act to a member or an officer of the Board.”.

**Change of heading.**

9. In the heading to Part III. of the Principal Act for “THE FUNDS” substitute “THE FUND”.

**Insertion of new sections in place of sections 9 to 14.**

10. For sections 9, 10, 11, 12, 13 and 14 of the Principal Act substitute—

**Construction Industry Long Service Leave Fund.**

- “9. (1) There is established a Construction Industry Long Service Leave Fund. 5
- (2) The Board is to administer the Fund.
- (3) There is to be paid into the Fund—
- (a) the long service leave charges paid under this Act in respect of persons doing construction work; and 10
  - (b) the proceeds of investment of the Fund; and
  - (c) the penalties recovered under this Act; and
  - (d) any other money required to be paid into the Fund by this Act.
- (4) There is to be paid out of the Fund— 15
- (a) the long service benefits provided for by this Act; and
  - (b) the expenses reasonably incurred in the administration of the Fund and the Act; and
  - (c) any other money authorized to be paid from the Fund by this Act.”. 20

**Investment of the Fund.**

- “10. The Board may invest the Fund or any part of it (whether or not already invested)—
- (a) in any manner in which section 4 of the *Trustee Act* 1958 authorizes a trustee to invest trust funds; or 25
  - (b) in a loan secured by mortgage of an estate in fee simple, or of a leasehold interest in land in Victoria if the amount of the loan does not exceed 90 per cent of the value of the security at the time the loan is made and if the loan is repayable on demand or for a term not exceeding 30 years.”. 30

**Joint ventures.**

- “11. (1) The Board may with the consent of the Minister after consultation with the Treasurer undertake joint ventures with any person for any of the purposes upon which it may invest money standing to the credit of the Fund. 35
- (2) For the purposes of any joint venture the Board may—
- (a) enter into a partnership or other agreement; or
  - (b) hold land in common with any other person; or

(c) subscribe for or otherwise acquire and dispose of shares in or debentures or other securities of a company or promote a company or companies.

5 (3) For the purposes of any joint venture a member of the Board or a nominee of the Board may be a director or hold office in a company and may exercise all the powers of a director or office holder of the company and may hold shares in a company in trust for the Board.”

**Insertion of new section after section 30.**

10 11. (1) In section 30 (9) of the Principal Act omit “and the employer or working sub-contractor may within fourteen days from the date of service of that notice appeal to the Industrial Relations Commission in Court session, which may hear and determine the matter”.

(2) After section 30 insert—

**Appeals against certified assessments.**

15 “30A. (1) An employer or working sub-contractor to whom a certified assessment under section 30 applies may within fourteen days from the date of service of notice of that certified assessment appeal to the Industrial Relations Commission in Court session.

20 (2) The Industrial Relations Commission in Court session may hear and determine an appeal against a certified assessment.

25 (3) If in the hearing of an appeal against a certified assessment evidence is produced which was not available to the Board when making the assessment the Commission upon receiving an application from the Board to do so may return the matter to the Board for a further assessment.

30 (4) In hearing an appeal against a certified assessment the Commission may determine the amount of long service leave charges to be paid by the employer to the Board and any interest and costs payable in respect of those charges and may by order exercise any power in relation to the payment of those charges which a Magistrates’ Court may exercise.

35 (5) Where an order under sub-section (4) is made the Registrar of the Commission must file a memorandum of the decision of the appeal in respect of which the order was made and a copy or certificate of the order with the Clerk of the Melbourne Magistrates’ Court.

(6) An order made under sub-section (4) a copy or certificate of which has been filed with the Clerk of the Melbourne Magistrates’ Court is deemed to be an order requiring the payment of money made by a Magistrates’ Court and may be enforced accordingly.

40 (7) The memorandum and copy or certificate referred to in sub-section (5) is evidence of the order contained in the copy or certificate.”

**Change of error.**

12. In section 37 (2) of the Principal Act for "1 June 1980" substitute "1 July 1980".

**Insertion of new section after section 46.**

13. After section 46 of the Principal Act insert—

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**Reciprocal arrangements.**

'46A. (1) The Minister may make a reciprocal arrangement with a Minister responsible for the administration of a corresponding law in any other State or Territory of the Commonwealth.

(2) A reciprocal arrangement may relate to long service leave payments, the exchange of information about service credits and entitlements to long service payments between the Board and any equivalent authority established under a corresponding law and any other matters relating to long service leave payments which the Minister thinks are necessary or convenient.

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(3) If a person has been paid a long service leave payment by an equivalent authority and the Minister has entered into a reciprocal arrangement with the Minister responsible for administering the equivalent authority and the payment is either wholly or partly in respect of a period of service in the construction industry in Victoria the Board must pay to the equivalent authority the prescribed amount.

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(4) For the purposes of sub-section (3) the "prescribed amount" is an amount equal to the amount that bears the same proportion to the amount paid to the person as the period of service in the construction industry in Victoria bears to the total period of service in respect of which the payment was made.

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(5) The repayment by the Board is subject to any terms and conditions which are specified in the reciprocal arrangement.

(6) If a reciprocal arrangement has been made this Act is to be construed as applying with any modifications that are necessary to give effect to the terms of the reciprocal arrangement.

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(7) In this section—

"Corresponding law" in relation to a State or Territory of the Commonwealth, other than Victoria, means a law of that State or Territory that—

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(a) provides for long service leave payments to persons employed in the construction industry if those payments are the same as or similar to the payments provided for by this Act; and

(b) is prescribed as a corresponding law for the purposes of this section.

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**Insertion of new section after section 48.**

14. After section 48 of the Principal Act insert—

**Leave in advance for working sub-contractors.**

5 “48A. (1) A working sub-contractor who has not terminated service in the construction industry may take long service leave after ten years of continuous service in the construction industry before the entitlement to that leave has accrued.

10 (2) A working sub-contractor who has had continuous service in the construction industry as a working sub-contractor who takes long service leave under sub-section (1) is to receive a refund of the working sub-contractor’s total contributions for the relevant period together with interest at the determined rate.

15 (3) A working sub-contractor who has had continuous service in the construction industry partly as a worker and partly as a working sub-contractor who takes long service leave under sub-section (1) is to receive—

- (a) an amount equal to one-sixtieth part of the working sub-contractor’s period of continuous service as a worker; and
- 20 (b) a refund of the working sub-contractor’s total contributions together with interest at the determined rate for the working sub-contractor’s period of continuous service as a working sub-contractor.

25 (4) A working sub-contractor who takes long service leave under sub-section (1) is not entitled to further leave or payment in lieu of long service leave for the period of continuous service in respect of which leave was taken under sub-section (1).

**Board to make reimbursement within seven years.**

15. In section 52 of the Principal Act after sub-section (3) insert—

30 “(4) The Board is not required to make a reimbursement under this section unless the employer makes an application for that reimbursement within seven years of the making of the payment for which the employer is entitled to be reimbursed.”

**Production of documents to inspector.**

35 16. In section 55 (1) of the Principal Act for paragraph (c) substitute—

40 “(c) require the production at the time and place specified by the Inspector of any books registers certificates notices records and documents required to be kept under this Act and the production of any pay-sheets or books in which



accounts are kept of the actual wage of persons to whom this Act applies;

- (ca) inspect examine any material to which paragraph (c) applies;”.

**Proceedings for the recovery of unpaid long service leave charges.**

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**17. Section 60 of the Principal Act is amended as follows:**

- (a) After sub-section (2) insert—

“(2A) In any proceedings for the recovery of unpaid long service leave charges an officer of the Board who is authorized in writing in that behalf may appear on behalf of the Board.

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(2B) In any proceedings for the recovery of unpaid long service leave charges the burden of proving that any person named in the summons as an employee of the defendant was not employed by the defendant lies with the defendant.”; and

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- (b) After sub-section (8) insert—

“(9) Any long service leave charge and any surcharge payable under this section owed by a corporation may be recovered by the Board from a corporation which is an associated corporation.

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(10) For the purposes of sub-section (9) a corporation is an associated corporation in relation to another corporation if—

- (a) the directors of the first-mentioned corporation and the directors of the other corporation are substantially the same; or

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- (b) the first-mentioned corporation and the other corporation are under substantially the same management.”.

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**Persons required to give notice of taking control of affairs of an employer or working sub-contractor.**

**18. Section 62 of the Principal Act is amended as follows:**

- (a) For sub-section (1) substitute—

“(1) If a person is appointed—

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- (a) a liquidator of a company which owes money to the Board or is required by this Act to make payments to the Board; or

(b) a trustee in bankruptcy of a person who owes money to the Board or is required by this Act to make payments to the Board—

5 that person must within fourteen days after being so appointed serve on the Board notice in writing of that appointment.”;

(b) In sub-section (2)—

(i) after “liquidator” insert “or trustee (as the case requires)”;

10 (ii) after “company” insert “or person (as the case requires)”;

(c) In sub-section (3)—

(i) after “liquidator” insert “or trustee (as the case requires)”;

15 (ii) in paragraph (a) for “the company until he has been” substitute “the company or person (as the case requires) until”;

(iii) in paragraph (c) for “he” substitute “the liquidator or trustee (as the case requires)”;

20 (d) For sub-section (4) substitute—

“**(4)** If the liquidator or trustee does not comply with any provision of this section (or fails as trustee duly to pay the long service leave charges for which the liquidator or trustee is liable under sub-section (3)) the liquidator or trustee must to the extent of the value of the assets which have been taken into the liquidator’s or trustee’s possession and which are or have been available at any time for the payment of the long service leave charges be personally liable to pay the long service leave charges and is guilty of an offence.”;

30 (e) In sub-section (5)—

(i) for “liquidators or required by law to carry out the winding up” substitute “liquidators or trustees”;

35 (ii) for “liquidator” substitute “liquidator or trustee”;

(iii) for “that person his” substitute “that person’s”;

(f) In sub-section (6) for “the liquidator in the winding up of a company including the remuneration of the liquidator” substitute “the liquidator or trustee in carrying out the duties of liquidator or trustee including the remuneration of the liquidator or trustee”;

40 (g) After sub-section (8) insert—

‘**(9)** For the purposes of this section “**liquidator**” in relation to a company includes—

45 (a) a receiver or receiver and manager of the property or any part of the property of the company; and

- (b) an official manager or deputy official manager of the company; and
- (c) a provisional liquidator of the company; and
- (d) a trustee or other person administering a compromise or arrangement made between the company and another person or other persons.’

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**Substitution of new section for sections 76 and 77.**

19. For sections 76 and 77 of the Principal Act substitute—

**Determination of type of construction work.**

- “76. (1) The Board may make a decision— 10
- (a) that any specified work is or is not construction work; or
  - (b) that any construction work is building trades work, electrical trades work or metal trades work.
- (2) The Board may make a decision under sub-section (1) either of its own motion or upon the application of a worker, working sub-contractor or employer or a person on behalf of a worker, working sub-contractor or employer. 15
- (3) An application for a decision of the Board under sub-section (1) must be in the prescribed form.
- (4) The Board in making a decision under sub-section (1)— 20
- (a) may decide that the work which is the subject of the decision was performed by a particular group of workers or sub-contractors; and
  - (b) may make the decision applicable to a group or class of workers or sub-contractors. 25
- (5) Upon considering an application for a decision under sub-section (1) the Board may—
- (a) choose to hear or not to hear the matter; or
  - (b) choose to make or not make a decision about the matter; or
  - (c) in making a decision have regard to any other decision it has made; or 30
  - (d) in making a decision inform itself in the manner it thinks fit.
- (6) A decision made under sub-section (1) by the Board has effect on and from the date on which the decision is made or any earlier date which is specified in the decision. 35
- (7) The Board must not specify as the date from which a decision under sub-section (1) 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 trades work, electrical trades work or metal trades work.

(8) If the Board decides—

(a) that any work specified in a decision under sub-section (1) is building trades work, electrical trades work or metal trades work; and

(b) that decision under sub-section (1) has effect on and from a date before the date on which the decision is made—

long service leave charges in respect of that work are payable under section 24.

(9) The Board is to make known its decisions under this section in any one or more of the following ways which in any particular case it considers to be appropriate:

(a) By publication in a daily newspaper;

(b) By publication in a trade or industry journal;

(c) By notification to any person involved in an application.

(10) Any person who made an application to the Board for a decision under sub-section (1) or any person affected by a decision of the Board under sub-section (1) may within 14 days of the person being notified of the decision by the Board appeal against the decision to the Industrial Relations Commission in Court session, which may hear and determine the matter.”.

#### **Certificate of Director to be evidence.**

20. After section 80 (3) of the Principal Act insert—

“(4) In any legal proceeding by or against the Board a certificate purporting to be signed by the Director setting out the period of service in the construction industry of any person is evidence of the facts given in it.”.

#### **Substitution of new section for section 86.**

21. For section 86 of the Principal Act substitute—

#### **Board may require information.**

“86. (1) The Board may by notice in writing require any person to give all that information including any books documents or papers under that person’s control to the Board which will enable the Board to ascertain that person’s or any other person’s liability or entitlement under this Act.

(2) A notice under sub-section (1) must specify the time (being not less than 28 days) and place at which the required information must be produced.

(3) A person required to give that information—

- (a) must do so in the specified time or in any further period allowed by the Board; and
- (b) must give that information that it is within that person's power to give; and
- (c) must not give any information which is to that person's knowledge false in any material particular." 5

#### **New regulation making powers.**

22. In section 87 (1) (c) of the Principal Act after "Act" insert "and enabling surcharges to be imposed for failing to make returns or making returns outside the time specified and the remittance at the Board's discretion and recovery of those surcharges" 10

#### **Amendments arising out of the amalgamation of the Funds.**

23. The Principal Act is amended as follows:

- (a) In sections 15 (1), 18 (1) and (2), 41 (3), 42 (3) (a) and (b), 43 (1), 44 (1) (2) (3) (4) and (5), 45 (1) (2) (3) and (4), 47 (3) and (4), 52 (1) and (3) and 83 (1) for "Funds" substitute "Fund"; 15
- (b) Sub-section (3) of section 17 is repealed;
- (c) In section 19 (1)—
  - (i) for "Building Trades Fund and the Metal and Electrical Trades Fund" substitute "Fund"; and 20
  - (ii) for "each of the Funds" substitute "the Fund";
- (d) In section 19 (3) for "each of the Funds" (wherever occurring) substitute "the Fund";
- (e) In sections 34 (4), and 52 (2) for "Funds" (wherever occurring) substitute "Fund"; 25
- (f) In section 38 (1) for "that Fund" (wherever occurring) substitute "the Fund";
- (g) Section 53 is repealed;
- (h) In section 50 (1), (2), (6) and (7) for "Building Trades Fund" substitute "Fund"; 30
- (i) In section 50 (3) for "Building Trades Fund" (wherever occurring) substitute "Fund";
- (j) In section 51 (1), (2) and (3) for "Metal and Electrical Trades Fund" substitute "Fund". 35

#### **Transitional provisions arising out of the amalgamation of the Funds.**

24. (1) On and from the commencement of section 10, the Fund established under the Principal Act before the commencement of section 10 and known as the Building Trades Fund is deemed for all purposes to be part of the Construction Industry Long Service Leave Fund 40

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established under the Principal Act on the coming into operation of section 10.

5 (2) On and from the commencement of section 10, the Fund established under the Principal Act before the commencement of section 10 and known as the Metal and Electrical Trades Fund is deemed for all purposes to be part of the Construction Industry Long Service Leave Fund established under the Principal Act on the coming into operation of section 10.

10 (3) On and from the commencement of section 10, unless the context otherwise requires, any reference in any Act or in any proclamation, appointment, Order in Council, order, rule, regulation, legal proceedings, instruments, document or writing of any kind whatsoever—

15 (a) to the Building Trades Fund is deemed and taken to refer to and mean the Construction Industry Long Service Leave Fund; and

20 (b) to the Metal and Electrical Trades Fund is deemed and taken to refer to and mean the Construction Industry Long Service Leave Fund.

