

Construction Industry Long Service Leave Bill 1983

NOTES ON CLAUSES

This Bill is a consolidation of the *Building Industry Long Service Leave Act 1975* and incorporates amendments which extend the scope of that Act to the metal trades construction and electrical contracting industries.

A schedule of the Clauses indicating the equivalent section in the 1975 Act follows these notes.

Clause 1 contains the usual provisions relating to citation and commencement, which will be by proclamation, and divides the Bill into parts.

Clause 2 amends or repeals the Acts mentioned in the Schedule and contains the usual saving provisions.

Clause 3 contains the interpretations. Compared with those contained in the 1975 Act, new interpretations are given for Construction Industry, the work performed in the industry, prescribed awards, the funds and working sub-contractors. These new interpretations result from the extension of the scope to include metal trades construction and electrical contracting. Generally the other definitions are similar to those contained in Section 2 of the 1975 Act.

Clause 4 generally re-enacts Section 26 of the 1975 Act except that it changes the name of the Board to the Construction Industry Long Service Leave Board and extends the membership of the Board to include representatives of the metal trades construction and electrical contracting industries.

Clause 5 generally re-enacts Section 27 of the 1975 Act and provides for the appointment of deputy members of the Board.

Clause 6 generally re-enacts Section 28 of the 1975 Act and sets out the requirements for meetings.

Clause 7 generally re-enacts Section 29 of the 1975 Act and provides that the Director, who replaces the Secretary, and such other staff as is required to assist the Board in the administration of the Act shall be appointed under and subject to the *Public Service Act 1974*.

Clause 8 generally re-enacts Section 30 of the 1975 Act and provides that the Board shall report annually to the Minister on the general administration and working of the Act.

Clause 9 establishes the Building Trades Fund of which the Building Industry Long Service Leave Fund (which was established under the 1975 Act) shall be deemed to be part. Sub-section (3) provides what shall be paid into the Fund while sub-section (4) provides what shall be paid out of the Fund.

Clause 10 establishes the Metal and Electrical Trades Fund. Sub-sections (3) and (4) provide what shall be paid into and out of the Fund.

Clause 11 permits adjustments between the Funds where it has been found that an amount has been paid into or out of the wrong Fund.

Clause 12 re-enacts the relevant provisions of the *Construction Industry (Electrical and Metal Trades) Long Service Leave Act 1982*.

Sub-section (1) permits money to be paid from the Building Trades Fund to the Metal and Electrical Trades Fund for the purposes of establishing the latter Fund; Sub-section (2) provides for the repayment of money; Sub-sections (3) and (4) provide the method for the fixing of the rate of interest to be charged on money paid out of the Building Trades Fund.

Clause 13 allows the Board to invest the funds in the manner similar to that provided under the *Superannuation Act 1958*. This Clause replaces Section 5 of the 1975 Act.

Clause 14 permits the Board to make temporary advances from one Fund to the other Fund and provides the conditions for the repayment of the advances.

Clause 15 generally re-enacts Section 5A of the 1975 Act which gives to the Board power to acquire and dispose of interests in land, to construct and maintain buildings on such land and to use any such building or land for its own purposes.

Clause 16 generally re-enacts Section 5B of the 1975 Act and permits the Board to employ persons outside the Public Service Act for the purpose of managing buildings and land in which it has an interest.

Clause 17 generally re-enacts Section 6 of the 1975 Act and permits the Board to lodge uninvested money with a bank.

Clause 18 requires the Board to keep proper account of its affairs and provides for the accounts relating to the Funds to be audited by the Auditor General. This Clause replaces Section 7 of the 1975 act.

Clause 19 generally re-enacts Section 8 of the 1975 Act and provides for an actuarial investigation of the state of sufficiency of each Fund at least once every three years.

Sub-section (3) requires the actuaries to state whether any reduction or increase in the rate of contribution is necessary and whether any changes could be made to improve the administration of the Funds.

Clause 20 generally re-enacts Section 9 of the 1975 Act and allows the Board to temporarily borrow money up to \$1 million.

Clause 21 generally re-enacts Section 10 of the 1975 Act and provides for the registration of employers.

Clause 22 generally re-enacts Section 11 of the 1975 Act and provides for the registration of working sub-contractors.

Clause 23 generally re-enacts Section 12 of the 1975 Act and provides for the registration of workers.

Clause 24 generally re-enacts Section 15 of the 1975 Act and provides that employers shall pay to the Board a monthly long service leave charge in respect of all workers they employ and that working sub-contractors who elect to contribute shall pay a monthly long service leave charge to the Board.

Sub-clause (2) provides that long service leave charges in respect of electrical trades work or metal trades work shall not be payable until after the appointed day which by sub-clause (3) shall be proclaimed by the Governor in Council.

Sub-clause (4) provides the method of calculating the long service leave charge while sub-section (5) permits the charges to differ between building trades work and metal trades work or electrical trades work.

Sub-clauses (6) and (7) provide the basis for calculating the amount of the charge to be paid to each Fund where more than one type of work was performed during the month.

Sub-clauses (9), (10) and (11) provide the meaning of ordinary pay of a worker.

Sub-clause (12) allows employment of less than five days in a month to be disregarded.

Clause 25 gives effect to a scheme of voluntary participation by all working sub-contractors and allows a working sub-contractor to elect not to pay long service leave charges in respect of himself. This clause replaces Section 13 of the 1975 Act.

Clause 26 generally re-enacts Section 15A of the 1975 Act and provides for the payment of contributions on a voluntary basis in respect of work done in another State or Territory.

Clause 27 provides for the payment of long service leave charges on a voluntary basis in respect of work done outside Australia.

Sub-clauses (2), (3), (4) and (5) provide the basis for calculating the amount of the charge to be paid to the Board.

Clause 28 generally re-enacts Section 15B of the 1975 Act and provides for exemptions in respect of work done in Victoria where employers or working sub-contractors are domiciled in another State or Territory.

Clause 29 generally re-enacts section 15C of the 1975 Act and provides for the payment of long service leave charges in respect of certain workers engaged on shopfitting work on 1 March 1982.

Clause 30 generally re-enacts Section 15D of the 1975 Act and enables the Board to make an assessment of long service leave charges where there is insufficient information available to enable long service leave charges to be calculated in accordance with Clause 24.

Sub-clauses, (5), (6), (7) and (8) provide for written objections to be considered by the Board and sub-clause (9) provides for an appeal to the Industrial Relations Commission in Court Session.

Clause 31 generally re-enacts Section 16 (1), (2) and (5) of the 1975 Act and provides for the calculation of long service leave pay to be paid to the workers. The meaning of ordinary pay in sub-clause (1) has been clarified and from the commencement of this clause will mean the total wage of the worker at the time of taking leave excluding overtime, travelling and fares allowances and annual leave loading.

Clause 32 generally re-enacts Section 17 of the 1975 Act and permits the Board to determine ordinary pay where it appears that the rate due to be paid is excessive. Sub-section (6) allows a worker to appeal to the Industrial Relations Commission in Court Session against a decision by the Board.

Clause 33 generally re-enacts Section 18 of the 1975 Act and allows the Board to determine the ordinary pay at a higher rate than that calculated in accordance with Clause 31.

Clause 34 generally re-enacts Section 19 of the 1975 Act and contains the limits of what is to constitute continuous service. In paragraph (1) an interval between periods of employment in the construction industry is increased to two years.

Sub-clause (2) has been inserted to permit pro-rata annual leave to be counted as service while sub-section (5) has been inserted to ensure that only that service on construction work outside Victoria for which charges were paid is counted as service for the purpose of calculating continuous service in the industry.

Clause 35 generally re-enacts Section 19A of the 1975 Act and sets out what constitutes continuous service of a working sub-contractor.

Clause 36 generally re-enacts Section 20 of the 1975 Act and provides for the determination of the entitlements of workers performing work in the construction industry prior to the commencement of the scheme. Sub-clauses (3) and (4) have been inserted and relate to the backdating of service credits to 1 March 1978 in respect to workers performing metal trades work or electrical trades work.

Sub-clause (8) (previously sub-section (7)) has been altered to enable service of less than five days in a month to be disregarded.

Clause 37 generally re-enacts Section 20A of the 1975 Act and sets out the factors to be taken into account when determining the long service leave entitlement of a working sub-contractor.

Clause 38 generally re-enacts Section 16 (3) and (4) of the 1975 Act and establishes a method of calculation by formula of the amount of interest to be credited to a working sub-contractor in respect of long service leave paid by him to the Board.

Clause 39 re-enacts section 2 (3) of the 1975 Act with respect to termination and continuous service.

Clause 40 generally re-enacts Section 21 of the 1975 Act and provides the quantum of the entitlement to long service leave of a worker.

Clause 41 generally re-enacts Section 21AA of the 1975 Act and sets out the entitlement of a working sub-contractor to long service leave benefits.

Clause 42 generally re-enacts Section 21AB of the 1975 Act and sets out the entitlement of a working sub-contractor who also has service in the construction industry as a worker.

Clause 43 generally re-enacts Section 21A of the 1975 Act and enables payments to be made to eligible persons either upon entitlement or upon termination of service.

Clause 44 generally re-enacts Section 22 of the 1975 Act and provides for payment in lieu of long service leave on the death of the worker or working sub-contractor.

Clause 45 generally re-enacts Section 22A of the 1975 Act and provides in certain circumstances an entitlement to a refund of contributions made by a person who was both a working sub-contractor and a worker.

Sub-clause (3) has been inserted to permit the Board on application to pay a refund of contributions to working sub-contractors who have ceased to be engaged in the industry.

Clause 46 generally re-enacts Section 23 of the 1975 Act and provides that service before 1 January 1965 shall be reduced by one quarter.

Clause 47 generally re-enacts Section 24 of the 1975 Act and provides for the taking of long service leave.

Clause 48 generally re-enacts Section 24A of the 1975 Act and enables a worker to take long service leave in advance after 10 years service by agreement with his employer.

Clause 49 provides the meaning of "appointed day".

Clause 50 generally re-enacts Section 25 of the 1975 Act and provides in respect of building trades work for the payment of leave which accrued before the appointed day from the Building Trades Fund.

Clause 51 provides that there shall be no payment from the Metal and Electrical Trades Fund in respect of entitlements which are either deemed to have accrued or have been paid prior to the appointed day. Sub-section (3) however provides for a payment in certain special circumstances where the entitlement to leave is solely created by the Act.

Clause 52 provides for the payment of long service leave that accrues or is deemed to have accrued after the appointed day.

Sub-clause (3) generally re-enacts Section 25 (4) of the 1975 Act.

Clause 53 provides the basis for determining the proportion of leave to be paid from each Fund.

Clause 54 generally re-enacts Section 48 (2) of the 1975 Act and provides for the certificate of appointment of inspectors.

Clause 55 generally re-enacts Section 48 (1) of the 1975 Act and provides the powers of inspectors.

Sub-clause (2) concerns the use of an interpreter and sub-clause (3) allows a person not to answer questions tending to incriminate himself.

Clause 56 requires an occupier to assist an inspector for the exercise of his powers under the Act.

Clause 57 creates the offence of obstructing an inspector, refusal of admittance to any premises and assaulting or intimidating an inspector.

Clause 58 requires an employer not to dismiss a worker merely because he gave information to an inspector.

Clause 59 generally re-enacts Section 39 of the 1975 Act and enables the Board to fix a date for payment of long service leave charges by an employer believed to be leaving Australia.

Clause 60 generally re-enacts Section 40 of the 1975 Act and enables the Board to sue for and recover unpaid long service leave charges.

Clause 61 generally re-enacts Section 41 of the 1975 Act and provides for substituted service.

Clause 62 generally re-enacts Section 42 of the 1975 Act and provides that a liquidator on appointment is to give notice of his appointment to the Board and sets out the responsibilities of liquidators in respect of long service leave charges.

Clause 63 generally re-enacts Section 43 of the 1975 Act and sets out the responsibilities to the Board of an agent for an absentee principal in the winding up of a business.

Clause 64 generally re-enacts Section 44 of the 1975 Act and sets out the responsibilities of trustees of an estate where long service leave charges were not paid during the lifetime of an employer and the powers of the Board to recover these charges.

Clause 65 generally re-enacts Section 45 of the 1975 Act and provides for the payment of long service leave charges by executors or administrators.

Clause 66 generally re-enacts Section 46 of the 1975 Act and sets out the liability for long service leave charges where two or more persons jointly employ a worker.

Clause 67 generally re-enacts Section 47 of the 1975 Act and provides that the payment of penalties shall be no relief from the payment of long service leave charges.

Clause 68 generally re-enacts Section 40A of the 1975 Act and states who may lay informations for offences and who may appear on behalf of the Board in any proceeding for an offence against the Act.

Clause 69 provides for offences to be heard and penalties recovered before a Magistrates Court consisting of a Stipendiary Magistrate sitting alone.

Sub-clause (2) provides for the Metropolitan Industrial Court to have exclusive jurisdiction within the Court District established by Section 91 (5) of the *Industrial Relations Act 1979*.

Clause 70 generally re-enacts Section 49 (1) and 50 of the 1975 Act and relates to particular offences under the Act.

Clause 71 generally re-enacts Section 49 (2) of the 1975 Act and prescribes a maximum penalty of 18 penalty units (\$1800) where no penalty is expressly provided elsewhere in the Act.

Clause 72 generally re-enacts Section 49 (3) of the 1975 Act and provides for the laying of an information for an offence within five years of its commission.

Clause 73 provides general provisions as to proceedings for offences relating to the onus of proof and other related matters. This provision is similar to Section 93 (1) of the *Industrial Relations Act 1979*.

Clause 74 sub-clause 1 provides for the prosecution for an offence of a person in his true ostensible or reputed name.

Sub-clause 2 deems a director of a corporation to have committed an offence when that corporation has been found guilty of an offence. This provision is similar to Section 94 of the *Industrial Relations Act 1979*.

Clause 75 provides that an appeal against a conviction shall be heard and determined by the Industrial Relations Commission in Court Session.

Clause 76 generally re-enacts Section 32 of the 1975 Act and gives the Board power on application to make a determination as to whether work of a particular kind is or is not building trades work, electrical trades or metal trades work. Sub-clause (10) has been inserted to provide for an appeal to the Industrial Relations Commission in Court Session.

Clause 77 enables the Board to determine that any construction work is building trades work, electrical trades work or metal trades work.

Sub-clauses (4), (5), (6) and (7) provide for the consideration of written objections and sub-clause (8) provides for appeals to the Industrial Relations Commission in Court Session.

Clause 78 generally re-enacts Section 33 of the 1975 Act and provides for the settlement of disputes in relation to entitlements by the Industrial Relations Commission in Court Session.

Clause 79 generally re-enacts Section 34 of the 1975 Act and provides that a decision of the Industrial Relations Commission shall be final and without appeal and provides for the procedures to be adopted by the Industrial Relations Commission.

Clause 80 generally re-enacts Section 51 of the 1975 Act and makes proof of certain matters in legal proceedings unnecessary.

Clause 81 generally re-enacts Section 31 of the 1975 Act and provides for the keeping of books and records by employers.

Clause 82 generally re-enacts Section 35 of the 1975 Act and prohibits contracting out.

Clause 83 generally re-enacts section 36 of the 1975 Act and restricts the entitlement of a worker or working sub-contractor to be paid in lieu of leave and their ability to engage in any employment during the period when they are on long service leave.

Clause 84 generally re-enacts Section 38 of the 1975 Act and enables the Board to make refunds in cases of over payment.

Clause 85 generally re-enacts Section 37 of the 1975 Act and describes the method to be adopted for acceptable service of notices.

Clause 86 generally re-enacts Section 48A of the 1975 Act and empowers the Board to require the provision of certain information for the purposes of exercising its functions and creates the offence of not providing the information sought by the Board.

Clause 87 generally re-enacts Section 52 of the 1975 Act and relates to the regulation making powers of the Governor in Council.

Clause 88 is a transitional provision deeming the Board to be the same body as the Building Industry Long Service Leave Board and provides for members of the latter Board to be members of the Board to be established by this Act.

Clause 89 is a transitional provision deeming the Building Industry Long Service Leave Fund to be part of the Building Trades Fund established by this Act.

Clause 90 is a transitional provision deeming registers kept under the 1975 Act to be part of the registers to be kept under this Act.

Clauses 91 and 92 are transitional provisions which delay the commencement of certain sub-clauses in respect to electrical trades work and metal trades work.

Clause 93 is a transitional provision which deems a working sub-contractor who holds a certificate of non applicability to have made an election under Clause 25.

Clause 94 is a transitional provision deeming references to certain matters under the 1975 Act to be references to like matters created by this Act.

Schedule repeals all current provisions relating to the 1975 Act except for Sections 16 and 18 of the *Building Industry Long Service Leave (Amendment) Act 1981* which are special provisions relating to certain Loy Yang Workers.

SCHEDULE OF CLAUSES

<i>Clause in Bill</i>	<i>Corresponding Section from 1975 Act</i>	<i>Clause in Bill</i>	<i>Corresponding Section from 1975 Act</i>
1	1	45	22A
2	—	46	23
3	2 (1)	47	24
4	26	48	24A
5	27	49	—
6	28	50	25
7	29	51	—
8	30	52	—
9	4	53	—
10	—	54	48 (2)
11	—	55	48 (1)
12	—	56	—
13	5	57	—
14	—	58	—
15	5A	59	39
16	5B	60	40
17	6	61	41
18	7	62	42
19	8	63	43
20	9	64	44
21	10	65	45
22	11	66	46
23	12	67	47
24	15	68	40A
25	13	69	—
26	15A	70	49 (1), 50
27	—	71	49 (2)
28	15B	72	49 (3)
29	15C	73	—
30	15D	74	—
31	16 (1), (2) and (5)	75	—
32	17	76	32
33	18	77	—
34	19	78	33
35	19A	79	34
36	20	80	51
37	20A	81	31
38	16 (3) and (4)	82	35
39	2 (3)	83	36
40	21	84	38
41	21AA	85	37
42	21AB	86	48A
43	21A	87	52
44	22	88-94	—

