

Construction Industry Long Service Leave (Amendment) Bill

NOTES ON CLAUSES

Clause 1 sets out the purposes of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 cites the Construction Industry Long Service Leave Act as the Principal Act.

Clause 4—

Sub-clause (1) provides for the lift installers to be included on the construction industry long service leave scheme.

Sub-clause (2) provides for the back-dating of long service leave benefits to lift installers to the “appointed day”, that is 1 August, 1983.

Sub-clause (3) provides for reimbursements to be made to employers who made payment in respect of long service leave to employees between the “appointed day” and the “commencement day”.

Sub-clause (4) provides that an employer who should have, because of the coming into operation of the Construction Industry Long Service Leave (Amendment) Act 1985, paid contributions to the Board, the employer is to pay those contributors within 60 days of the last day of the month the Section commences.

Sub-clause (5) provides the definitions for the purposes of the Clause.

Clause 5 makes consequential amendments to the Act as a result of—

- (a) the amalgamation of the Building Trades Fund and the Metal and Electrical Trades Fund.
- (b) amendments by clause 18 dealing with the liquidation and winding up of companies.
- (c) the provision of a power of delegation to officers of the Board by the insertion of a definition of “officer”.

Clause 6 changes the title of Chairman to Chairperson of the Board.

Clause 7 makes amendments consequent upon Clause 6 changing the title of Chairman to Chairperson of the Board.

Clause 8 provides that the Board may delegate its powers to a member or an officer of the Board.

Clause 9 changes the heading of Part III.

Clause 10 makes a number of changes to Part III of the Act, namely:

- the new section 9 establishes the Construction Industry Long Service Leave Fund which is an amalgamation of the former Building Trades Fund and the Metal and Electrical Trades Fund.
- the new section 10 re-enacts the former section 13.
- the new section 11 provides that the Board with the consent of the Minister (after consultation with the Treasurer) for Employment and Industrial Affairs, may enter into joint ventures as part of its investment powers.

Clause 11—

Sub-clause (1) makes a consequential amendment upon the insertion of a new section 30A.

Sub-clause (2) inserts a new section 30A dealing with appeals by employers and working sub-contractors against certified assessments of the Board relating to long service charges. In particular it provides—

- an appeal against a certified assessment to the Industrial Relations Commission in Court session which may hear and determine the appeal.
- that if evidence is produced at an appeal which was not available to the Board when making the certified assessment the Commission may on application from the Board, return the matter to the Board for a further assessment.
- that the Commission at a certified assessment appeal may determine the amount of long service leave charges to be paid (including any interest) and costs to be paid and may make an Order to that effect.
- that a memorandum of decision and a copy or certificate of an Order of the Commission is to be sent by the Registrar of the Commission to Clerk of the Melbourne Magistrates' Court.
- that an Order of the Commission is deemed to be made by a Magistrates' Court and enforceable accordingly.
- the memorandum and copy or certificate of the Order shall be evidence of the Order made by the Commission.

Clause 12 corrects an error in the Principal Act by substituting “1 July, 1980” for “1 June 1980”.

Clause 13 inserts a new section 46A into the Principal Act dealing with reciprocal arrangements for recognition of interstate service in the construction industry.

Sub-section (1) provides the power for the Minister to enter into such arrangements.

Sub-section (2) provides that a reciprocal arrangement may relate to—

- long service leave payments.
- the exchange of information about service credits.
- entitlements to long service leave payments between the Board and an equivalent authority in a prescribed State or Territory.

The arrangement may also relate to other matters dealing with long service leave payments which the Minister thinks necessary or convenient.

Sub-section (3) obliges the Board to pay to an equivalent authority the “prescribed amount” where a person has been paid a long service leave payment by that authority.

Sub-section (4) defines “prescribed amount”.

Sub-section (5) provides that any repayment made by the Board is subject to the arrangement entered into.

Sub-section (6) provides that the Principal Act is to be construed as applying with any modifications that are necessary to give effect to the terms of the arrangement to overcome any differences between the States and Territories in entitlements.

Sub-section (7) defines the term “corresponding law”.

Clause 14 inserts a new section 48A into the Act to allow a working sub-contractor to take pro-rata benefits after 10 years continuous service in the construction industry without

having to leave the industry to receive a payment. This new section equates the benefits between workers and working sub-contractors.

Clause 15 makes an amendment to section 52 by adding a sub-section (4) to provide that an employer may seek reimbursement under section 52 for a payment made in respect of long service leave charges up to seven years after the payment was made. Applications for reimbursement after that period will not be entertained.

Clause 16 substitutes new paragraphs (c) and (ca) for section 55 (1) (c) of the Principal Act to provide that an Inspector may, in addition to requiring a person to provide books and records required under the Act, require that person to produce wages sheets and books of accounts of wages paid and to produce those books and records at a time and place specified by the Inspector.

Clause 17 amends section 60 of the Principal Act as follows:

- The new sub-section (2A) provides that an officer of the Board may appear on behalf of the Board at debt recovery proceedings.
- The new sub-section (2A) provides that the onus of proof in debt recovery proceedings that the person named in the summons as employee was not employed by the employer shall lie with the employer.
- These two amendments produce consistency in evidentiary matters, prosecution proceedings and civil debt recovery proceedings.
- The new sub-sections (9) and (10) provide that the Board may recover long service leave charges and any surcharge owed by a corporation from an associated corporation.

Clause 18 makes a series of amendments to section 62 of the Principal Act relating to the duties of liquidators. The amendments are directed at imposing the duties and obligations set out in that section relating to the winding up of a company upon—

- a trustee in bankruptcy.
- a receiver or manager of a company.
- a provisional liquidator of a company.
- a trustee or any other person administering a compromise or arrangement between a company and another person or persons.

Clause 19 substitutes a new section 76 for the current sections 76 and 77 relating to Board decisions about construction work, building trades work and electrical and metal tradeswork. The proposed section 76 provides—

- that the Board may of its own notion or upon application make a decision that any work is or is not construction work and that any construction work is building trades work or electrical and metal trades work.
- that an application for the decision is to be in the prescribed form.
- that in making a decision the Board may apply that decision to a specific worker or sub-contractor or may give it a more general application to a group or class of workers or sub-contractors.
- that in making a decision, the Board may—
 - choose to hear or not to hear the matter;
 - choose to make or not to make a decision;
 - have regard to any other decision it has made as a precedent;
 - inform itself in the manner it thinks fit and need not give a person an opportunity to be heard.

- that a decision of the Board has effect from the date specified in the decision which may be back-dated but not earlier than the first day which the Board considers that the relevant employer first employed workers.
- that long service leave charges are payable in accordance with section 24 in consequence of a Board decision.
- that the Board is to make known its decision under the new section in one of the following ways which it considers appropriate in a particular case:
 - (i) By publication in a daily newspaper;
 - (ii) By publication in a trade or industry journal;
 - (iii) By notification to any person involved in an application;
- that a person who has made an application to the Board for a decision or any person affected by a decision of the Board may appeal against that decision to the Industrial Relations Commission in Court session.

Clause 20 adds a new sub-section 80 (4) to provide that a certificate of the Director setting out the period of service in the construction industry of any person shall be evidence of the facts in any legal proceedings by or against the Board.

Clause 21 substitutes a new section 86 of the Act to—

- provide that a person to whom a section 86 notice has been issued shall be required to furnish the information and all books, documents and other papers at a place specified on the notice.
- produce consistency in expression in relation to the requirements to produce information, books documents and other papers which was lacking in the former section 86.

Clause 22 amends section 87 (1) (c) to enable the making of regulations to empower the Board to impose a surcharge for failing to make returns or making returns outside the specified time. The Board will also have the discretion to remit all or any part of the surcharge. The method of recovery of the surcharge will also be prescribed by Regulation.

Clause 23 makes amendments to various sections of the Principal Act consequent upon the amalgamation of the Building Trades Fund and the Metal and Electrical Trades Fund.

Clause 24 sets out the transitional provisions arising out of the amalgamation of the Building Trades Fund and the Metal and Electrical Trades Fund.