



Update—FEBRUARY 2019

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Labour Only Workers / Contractors

Contractors engaged wholly or principally for their labour are “employees” for the purposes of the Rules of the Construction Industry Long Service Fund (the Rules).

This type of worker engagement is confusing due to the amount of legislation that may apply in this area: the Superannuation Guarantee Act, Alienation of Personal Services Income and even the Common Law. Each has their own test and measures that muddy the interpretative waters in this area.

TasBuild’s own rules do not interact with these other tests or measures. TasBuild’s rules are a standalone requirement that only apply to the Construction Industry (Long Service) Act and the Rules.

The Rules state that an:

“Employee means a person who is, or has been, employed in Relevant Employment and includes any person engaged whether:

(i) under a contract of service;

(ii) under a contract that is wholly or principally for the labour of the person;

(iii) under a contract, whether or not a contract of employment, by any labour hire agency or group training scheme.”

Item (ii) above means that where an Employer employs another person in “Relevant Employment”, and that other person is contracted to provide, or principally provide, their labour, then that person is an **EMPLOYEE** for the purposes of the Rules.

Note that item (ii) only relates to where the person employed is an individual or sole trader. Where the contract is with a partnership or an incorporated organisation, the contract is unlikely to meet the “labour of the person” (i.e. a single specific person) requirement, unless specified in the contract.

Where the Employer does contract an individual or sole trader, for the provision of their labour, then the Employer will be required to register that employee and pay long service contributions into the Fund. The employee will then accrue service towards a long service entitlement while they are so employed.

What TasBuild considers

In applying the “wholly or principally for labour” component of the definition, TasBuild will consider the following questions:

Did the contract allow the worker to engage others to do the work?

Did the worker provide materials of a significant value, as part of the contract?

Did the worker provide tools and/or plant or equipment (other than that normally expected to be provided by a worker doing the type of work for which they were engaged) of a significant value as part of the contract?

Did the worker need to apply skills at a higher level than would normally be expected from a worker of their classification?

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Entitlement Statistics for: January 2019

- Total entitlements paid: **108**
- Total value of entitlements paid: **\$867,025.10**
- Average weekly rate paid for all entitlements: **\$1,263.28**
- Average weekly rates paid to specific trades:

Boilermaker Welder:	\$1,238.28
Carpenter:	\$1,222.70
Concreter:	\$1,346.00
Electrician:	\$1,397.90
Fitter & Turner:	\$1,216.00
Glazier:	\$1,163.25
Labourer:	\$1,211.96
Painter:	\$832.39
Plant Oper:	\$1,163.15
Plasterer:	\$1,203.30
Plumber:	\$1,250.03
Refrig Mechanic:	\$1,837.75
Rigger/Scaffolder:	\$1,105.31
Road maker:	\$1,098.33
Sheetmetal Wkr:	\$1,062.35
Other:	\$1,932.00

The weekly rates are an average of the rates actually paid by TasBuild to employees taking an entitlement during the subject month. The weekly rates paid have been calculated in accordance with the requirements of the Act and the Rules of the Fund. In general terms the rates represent the ordinary weekly amount payable to the employee and do not include site specific or other various compensatory allowances.

The information contained in this Update is of a general nature and does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Construction Industry (Long Service) Act applies to you.

Labour Only Workers / Contractors

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Contracts

When considering the employment relationship, TasBuild will consider the details of the contract entered into by the parties together with the actions and relationship of the parties.

The best form of contractual agreement in these circumstances is a **written contract**. Where both parties have freely signed the contract, it provides prima facie evidence of their agreement and corroborates both party's agreement as to conditions. It will also be a part of valuable evidence for TasBuild's assessment.

Where the contract is **verbal**, evidence of the actual conditions agreed to is more difficult to prove. Having said that, where both parties confirm the conditions they agreed to, that is quite acceptable.

In such circumstances, TasBuild will review all the available information and make a decision based on the evidence provided by each party.

Online tool

To help employers and workers work out their position, TasBuild will be developing an online assessment tool, similar to the ATO's "Employer/contractor Decision Tool". The Tool will be available shortly on our web page at www.tasbuild.com.au.

TasBuild will also be employing a Project Officer who will focus on the "labour only" employment area and provide information to employers and employees.

If you need any further information, please contact TasBuild on 03 6294 0807.

Computer System—Upgrade

Despite TasBuild's best efforts, the launch date for our computer system upgrade has been deferred.

The software developers are working to ensure that the system will be operational in the not too distant future.

We will keep you updated as to the progress of this matter.

Until you hear further, its operations as per normal.