



Update - September 2016

Volume 16, Issue 3

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**23.09.2016: 12:30 to 3:30,
and
29.09.2016 8:30 to 1:30**

22 September 2016

Annual General Meeting

The **Annual General Meeting** of the Trustee & Annual Meeting of contributors, beneficiaries & potential beneficiaries will be held at **Rydges Hotel**, Argyle Street, North Hobart at **5:00 pm** on Thursday the **6th of October 2016**.

All contributors and beneficiaries are invited to attend. After the meeting you are welcome to join the TasBuild Board Members and Staff for light refreshments. RSVP on 62940807 by 3 October 2016 if you are wishing to attend. **See you there.**

Court Prosecutions

TasBuild takes their responsibility to administer the Construction Industry Long Service Act 1997 seriously to protect the rights of workers and to ensure a level playing field for employers.

The details of two recent cases are provided below. The first relates to an employer who initially failed to register with the Fund and then failed to provide information, despite a Court Order being issued directing compliance. The second relates to an employer who failed to lodge Employer Returns and pay contributions as required also contrary to a Court Order.

It should be noted that these matters are both criminal convictions, the specific details are:

The Magistrates Court of Tasmania recently ordered an employer to pay a fine of \$4,000.00 in addition to TasBuild's costs for failing to comply with a Court order.

A Notice to Supply Records and Information had been served on the employer. The employer had failed to complete and return it to TasBuild. As such TasBuild applied for an order requiring compliance with the Notice.

The Magistrates Court ordered the employer to produce all records and information requested in a Notice to Supply Records and Information within 14 days of the order. The employer failed to comply with the Court order.

The failure to comply with a Court order amounts to contempt which is punishable by imprisonment or a fine or both.

TasBuild initiated proceedings asking the Magistrates Court to punish the employer for failing to comply with the Court order.

Entitlement Statistics for: July 2016

- Total entitlements paid: 79
- Total value of entitlements paid: \$723,068.27
- Average weekly rate paid for all entitlements: \$1,186.72
- Average weekly rates paid to specific trades:

Boilermaker Welder:	\$1,266.64
Carpenter:	\$1,123.86
Carpet layer:	\$1,082.09
Concreter:	\$1,197.15
Electrician:	\$1,340.94
Fitter & Turner:	\$1,249.56
Glazier:	\$926.12
Labourer:	\$1,132.42
Landscaper:	\$1,082.71
Painter:	\$1324.22
Plant Oper:	\$968.91
Plasterer:	\$1,035.90
Plumber:	\$1,091.01
Refrig Mech:	\$1,092.50
Rigger/Scaff:	\$1,170.27
Road maker:	\$1,320.50
Sheet metal Wkr:	\$2,539.64
Other Workers:	\$1,639.10

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.

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Court Prosecutions.....continued from page 1

The employer was served with the proceedings but failed to appear at the hearing. The Magistrates Court ordered that a warrant be issued for the employer's arrest. The employer was arrested and appeared before the Court where he was cross-examined about his failure to comply with the Court order.

The Magistrates Court was satisfied that the employer was guilty of contempt and ordered that he pay a fine of \$4,000.00. This recent matter demonstrates that the Magistrates Court treats contempt seriously and that there needs to be a penalty for committing such a serious breach.

TasBuild takes its responsibilities in managing the long service leave fund seriously. To avoid court proceedings any notices requesting information should be returned promptly to TasBuild. Ignoring the notices or subsequent court proceedings is not an option as this case shows. We will not go away.

The Magistrates Court convicted the second employer as a result of a prosecution by TasBuild, for their failure to supply information (lodge Returns) in breach of the Act and failure to make payment (contributions) which is also a breach.

The employer was convicted of two counts of failure to supply information and six counts of failure to make payment. Even though the employer had remedied some of its failures prior to the hearing by making payments and providing some of the required information the employer was still convicted as they did not comply within the timeframes of the Notice to Supply Records and Information and invoice terms.

This is a significant decision in that employers can be convicted by the Court if they have complied with their requirements but where the compliance was outside of the specified time limits.

In handing down the decision the Magistrate stated that charges such as these frustrate a corporation that is responsible for protecting the rights of workers and that a deterrent penalty was greatly needed.

The employer was fined the sum of \$1,000.00 in relation to the two counts of failure to supply information and \$1,200.00 in relation to its failure to make payment. The Magistrates Court also ordered that TasBuild's costs of the prosecution be paid by the employer which can be significant and sometimes greater than the fines imposed.

An employer not lodging returns or making payments into the Fund compromises the position of all those employers who comply with their obligations.

An employer who does not lodge returns and fails to make payments has a reduced labour overhead of 2 to 2.5 percent of their labour cost over employers who are complying with their TasBuild obligations. In some cases the Fund is also paying the long service obligations of non-complying employers.

Non complying employers are not competing on an equal basis and are using their non TasBuild compliance and other cost cutting methods to do so. TasBuild will continue to proactively pursue non-complying employers to restore the level playing field for all Construction Industry employers.

On-Line Return Lodgment

We have recently upgraded the Online system to enable Google Chrome/Edge/Windows 10 users to Add/Terminate workers within the Employer returns. If you are experiencing problems you need to open a new browser page and log into our website www.tasbuild.com.au. Do not use a link from the lodgment reminder and/or a favourites shortcut link that you may already have on your desktop.

Once you have done this the Add Worker button should work, if not please contact TasBuild and advise us as to the Internet Browser you are using.

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.