

**tasmanian legislation**

TASMANIA'S CONSOLIDATED LEGISLATION ONLINE

VIEW SUMMARY

The legislation that is being viewed is valid for 25 Jun 2017.

Construction Industry (Long Service) Act 1997 (No. 83 of 1997)

Requested: 25 Jun 2017

Consolidated: 25 Jun 2017

INFORMATION

Notes:

Links:

Table of Amending
Instruments:

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Responsible Minister and
Department:

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TASMANIA

Construction Industry (Long Service) Act 1997

An Act to repeal the *Long Service Leave (Construction Industry) Act 1971*, vest funds of the Fund established under that Act in the company that administers that Fund and provide for matters relating to the scheme administered by that company

[Royal Assent 14 January 1998]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Construction Industry (Long Service) Act 1997*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act –

commencement day means the day on which this Act commences;

company means the company declared under section 4;

construction industry means any industry involved in any construction described in Division C or Division E of the Standard Industrial Classification;

corresponding body means a body in another State or a Territory of the Commonwealth that administers a scheme corresponding to the new scheme;

corresponding law means a law of another State or a Territory of the Commonwealth that –

(a) provides for matters relating to long service leave in the construction industry; and

(b) is declared to be a corresponding law by the Minister by notice published in the *Gazette*;

employee means a person engaged in the construction industry;

employer includes a person who is self-employed;

new scheme means the scheme established under the Trust Deed;

previous fund means the Long Service Leave (Construction Industry) Fund established under the repealed Act;

previous scheme means the scheme established under the repealed Act;

repealed Act means the *Long Service Leave (Construction Industry) Act 1971*;

Standard Industrial Classification means the Australian and New Zealand Standard Industrial Classification issued by the Australian Bureau of Statistics in 1993 (ABS Catalogue No. 1292.0);

Trust Deed means the trust deed establishing the new scheme executed by –

(a) TasBuild Limited on 19 June 1998, so long as that company is declared by the Minister under section 4 to be the company that is to administer the new scheme; or

(b) if another company is so declared, that other company.

4. Declaration of company

The Minister, by notice published in the *Gazette*, may declare a company to be the company that is to administer the new scheme.

PART 2 - Registration

5. Registration of employers

(1) An employer who is engaged in any construction industry covered by the new scheme and who is the employer of an employee covered by the new scheme must –

(a) register with the company; and

(b) make any payment that the company determines is necessary to fulfil its obligations under the new scheme, unless the company imposes a levy under section 7.

Penalty:

Fine not exceeding 100 penalty units.

(2) An employer is not obliged to make a payment for a period under subsection (1)(b) in respect of a person who, under any Act, award or agreement, receives any benefit or entitlement relating to long service for that period.

(3) The company must refund any payment made by an employer who is not obliged to make that payment under subsection (2).

6. Registration of employees

(1) An employer engaged in any construction industry covered by the new scheme must apply to the company for registration of each employee of the employer.

Penalty:

Fine not exceeding 100 penalty units.

(2) The company is to register a person if, in its opinion, the person is eligible for registration.

(3) If an employer fails to apply for registration of an employee, the company may register the employee.

7. Levy

(1) The company may impose a levy to fulfil its obligations under the new scheme.

(2) A levy may be imposed only –

(a) in substitution for any payment determined for the purpose of section 5(1)(b); and

(b) on a person who is liable to pay a levy under section 25 of the *Building and Construction Industry Training Fund Act 1990*.

(3) A person must pay any levy imposed on the person under this section.

Penalty:

Fine not exceeding 100 penalty units.

8. Records, returns and information

(1) An employer or a person liable to pay a levy under section 7 is to –

(a) supply the company with any records or information the company requires in relation to the new scheme; and

(b) make any returns the company requires in relation to the new scheme.

(2) An employer, in respect of any employee of the employer, must –

(a) keep for a period of 7 years after the termination of that employee's employment, a record of that employment; and

(b) provide the company with access to that record when requested by the company to do so.

Penalty:

Fine not exceeding 10 penalty units.

(3) A termination of the employment of an employee in accordance with section 12(4) is not a termination for the purposes of subsection (2) of this section.

9. Enforcement

(1) The company may recover any payments required to be made to it by an employer under this Act as a debt in any court of competent jurisdiction.

(2) The company may apply to the Magistrates Court for an order to enforce an obligation imposed under this Act.

(3) On hearing an application, a magistrate may make an order in respect of any or all of the following:

- (a) the registration of an employer or employee;
- (b) the keeping of, and access to, records relating to an employee;
- (c) any other matter that he or she considers necessary or desirable for the purposes of enforcing an obligation imposed under this Act.

9A. Extension of limitation period

(1) Notwithstanding the *Limitation Act 1974* and section 9B(3), the company may commence proceedings to enforce an obligation to make a payment under this Act that was, or is, due at any time after 1 July 1983.

(2) Subsection (1) expires 12 months after the commencement of the *Construction Industry (Long Service) Amendment Act 2003*.

9B. Time of occurrence of offence

(1) A payment required to be made under this Act is taken to have been due at the time at which the company becomes, or ought reasonably to have become, aware that the payment was required to be made.

(2) A failure to register an employee in accordance with section 6 is taken to have occurred at the time at which the company becomes, or ought reasonably to have become, aware that the failure has occurred.

(3) Any proceedings by the company after the commencement of the *Construction Industry (Long Service) Amendment Act 2003* to recover a payment due to the company must be commenced within 6 months after the company becomes, or ought reasonably to have become, aware that the payment was due.

(4) For the purposes of subsection (3), proceedings to recover a payment due to the company include proceedings to obtain records, returns or information under section 8 in respect of that payment.

10. Other long service leave provisions

(1) Any period during which a person is registered with the company is not counted towards any long service, long service payment or other long service benefit under any Act, award or agreement.

(2) Subsection (1) does not apply to any period during which a person while registered is not engaged in the construction industry.

PART 3 - Savings and transitional provisions

11. Previous fund

(1) Any amount standing to the credit of the previous fund immediately before the commencement day is, on that day, transferred to and vests in the company.

(2) Any liability or obligation required to be met out of the previous fund before the commencement day is, on or after that day, to be met by the company.

(3) Any amount due to the previous fund before the commencement day is, on or after that day, recoverable as an amount due to the company.

(4) Any liability, obligation or costs incurred in relation to replacing the previous scheme by the new scheme is to be met by the company.

12. Rights, entitlements, benefits and obligations

(1) Any right, entitlement or benefit acquired or accrued by a person under the repealed Act immediately before the commencement day is, on that day, a right, an entitlement or a benefit acquired or accrued by that person under the new scheme.

(2) Any obligation or liability incurred by a person under the repealed Act immediately before the commencement day is, on that day, an obligation or a liability incurred by the person to the company.

(3) Any obligation or liability incurred by a person in respect of the termination of relevant employment, within the meaning of the repealed Act, is incurred by the person to the company.

(4) For the purposes of this Act and the application of the repealed Act to this Act, the employment of an employee to whom the repealed Act applied immediately before 1 July 1998 is taken to have been terminated on that date.

(5) This Act applies to an employee referred to in subsection (4) and is taken to have so applied on and from 1 July 1998.

(6) Subsections (4) and (5) are taken to have commenced on 1 July 1998.

13. Registration

A person who, immediately before the commencement day, has a period of reckonable service for the purpose of the repealed Act is, on that day, taken to be registered with the company.

14. Assets

(1) Any asset vested in the previous fund immediately before the commencement day is, on that day, transferred to the company.

(2) Any tax, duty, fee or other charge under any law of Tasmania is not payable in respect of the transfer under subsection (1).

15. Proceedings

Any proceedings instituted under the repealed Act and not heard or determined before the commencement day may, on or after that day, be heard and determined under that Act.

16. Applications

(1) Any application made under the repealed Act and not determined immediately before the commencement day may, on or after that day, be determined under that Act.

(2) If a determination made under subsection (1) requires a payment to or from the previous fund, that payment is payable to or from the company.

17. Appeals

(1) Any appeal instituted under the repealed Act and not heard or determined before the commencement day may, on or after that day, be heard and determined under that Act.

(2) If a determination made under subsection (1) requires a payment to or from the previous fund, that payment is payable to or from the company.

PART 4 - Miscellaneous

18. Scheme to provide equivalent benefits and entitlements

The new scheme must provide for benefits and entitlements that are no less favourable than those provided under the previous scheme and the repealed Act.

19. Rule against perpetuities inapplicable

The rule against perpetuities does not apply to any money standing to the credit of the company in respect of the new scheme.

20. Contracting out prohibited

Any provision of an agreement purporting to limit, exclude or modify the operations of this Act is void.

21. Reciprocal arrangements

(1) The Minister, at the request of the company, may make a reciprocal arrangement relating to any long service matter in the construction industry as requested by the company with a Minister responsible for the administration of a corresponding law.

(2) The company must pay to a corresponding body an amount equal to the amount that bears the same proportion to the amount paid to a person as the period of service in the construction industry in Tasmania bears to the total period of service in respect of which the payment was made if –

(a) the person has been paid a long service leave payment by the corresponding body under a corresponding law; and

(b) the payment is either wholly or partly in respect of a period of service in the construction industry in Tasmania; and

(c) the Minister has entered into a reciprocal arrangement with the Minister responsible for administering that corresponding law.

(3) A payment by the company under subsection (2) is subject to any terms and conditions specified in the reciprocal arrangement.

22. Cessation of registration

A person ceases to be registered with the company when the person has been absent from the construction industry covered by the new scheme for a continuous period of 4 years or more unless the company otherwise determines.

23. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

(3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(5) A provision referred to in subsection (4) may take effect on and from the commencement day or later.

24.

The amendment effected by this section has been incorporated into the authorised version of the Long Service Leave (Construction Industry) Act 1971.

25. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Workplace Standards; and
- (b) the Department responsible to the Minister for Workplace Standards in relation to the administration of this Act is the Workplace Standards Authority.