



**CONSTRUCTION INDUSTRY LONG SERVICE LEAVE  
(MISCELLANEOUS) AMENDMENT ACT 1995**

**No. 40 of 1995**

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**ELIZABETHAE II REGINAE**

A.D. 1995

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No. 40 of 1995

An Act to amend the Construction Industry Long Service Leave Act 1987.

[Assented to 4 May 1995]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1995*.

(2) The *Construction Industry Long Service Leave Act 1987* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "agreement" and substituting the following definition:

"agreement" means—

- (a) an enterprise agreement or industrial agreement in force under the *Industrial and Employee Relations Act 1994*; or
- (b) a certified agreement or an enterprise flexibility agreement in force under the *Industrial Relations Act 1988* of the Commonwealth;

(b) by inserting after the definition of "allowable absence" in subsection (1) the following definition:

"apprentice" includes a trainee under a contract of training for a trade;;

- (c) by striking out paragraph (a) of the definition of "award" in subsection (1) and substituting the following paragraph:

(a) an award or order of the Industrial Relations Commission of South Australia;;

- (d) by striking out from subsection (1) the definition of "construction work";

- (e) by striking out from subsection (1) the definition of "contract of service" and substituting the following definition:

"contract of service" includes a contract of training for a trade;;

- (f) by striking out from subsection (1) the definition of "electrical or metal trades work" and substituting the following definition:

"electrical or metal trades work" means on site work that involves—

(a) electrical or metal work associated with—

(i) the construction or erection of a building or structure that is to be fixed to the ground and wholly or partially constructed on site; or

(ii) the alteration or demolition of a building or structure; or

(b) the construction, erection, installation, extension, alteration or dismantling of—

(i) a transmission or distribution line, or plant, plant facility or equipment used in connection with the supply of electricity; or

(ii) an air-conditioning, ventilation or refrigeration system; or

(c) the construction, erection, installation, extension, alteration, servicing, repairing, replacing of parts or dismantling of a lift or escalator; or

(d) electrical or metal work associated with other engineering projects (whether or not within the ambit of a preceding paragraph);;

- (g) by striking out from subsection (1) the definition of "the Funds" and substituting the following definition:

"the Fund" means the *Construction Industry Fund* referred to in Part 4;;

- (h) by striking out from subsection (1) the definition of "ordinary hours";

- (i) by inserting after the definition of "the repealed Act" in subsection (1) the following definition:

"return period" means a return period under section 27(1);;

(j) by striking out subsections (2) and (3) and substituting the following subsections:

(2) For the purposes of this Act, a person will be taken to have worked for a day if (and only if) the person spends five or more consecutive hours engaged in employment to which this Act applies (and then each such period of five or more consecutive hours will be taken to be a "day" under this Act).

(3) Subject to this Act, a person's ordinary weekly pay will be—

(a) if at the relevant date the person is being paid under an award for work in the construction industry—the weekly base rate of pay for ordinary hours prescribed by the award for work of the kind performed by the person as a construction worker at the relevant date;

(b) in any other case—an amount determined by averaging the person's weekly earnings as a construction worker over the period of 52 weeks immediately preceding the relevant date,

subject to the following qualifications:

(c) a week in which the person did not act as a construction worker must be disregarded for the purposes of paragraph (b); and

(d) the regulations may—

(i) declare payments made to or for the benefit of a construction worker that must be included for the purposes of any determination or calculation under this subsection; and

(ii) declare payments made to or for the benefit of a construction worker that must be excluded for the purposes of any determination or calculation under this subsection; and

(e) if the person has not been a construction worker at all during the period of 52 weeks immediately preceding the relevant date, the person's ordinary weekly pay will be taken to be an amount that represents the average ordinary weekly pay that was applicable under this Act for all persons engaged in the kind of work last performed by the person as a construction worker who took leave or received an entitlement in the financial year immediately preceding the relevant date.

(4) Unless otherwise specified, ordinary weekly pay will be determined as at the end of the last completed return period under this Act.

#### **Amendment of s. 5—Application of this Act**

4. Section 5 of the principal Act is amended—

(a) by inserting before subsection (1) the following subsection:

(1AA) Subject to this section, this Act applies to a person's employment if the person is within the ambit of subsections (1), (1A) or (1B).;

- (b)** by striking out from subsection (1) "Subject to this section, this Act applies to a person's employment if" and substituting "A person is within the ambit of this subsection if";
- (c)** by striking out from subsection (1)(a) "that" and substituting "the";
- (d)** by striking out from subsection (1) "this Act ceases to apply to" and substituting "this subsection ceases to apply to the ";
- (e)** by inserting after subsection (1) the following subsections:

**(1A)** A person is within the ambit of this subsection if—

- (a)** the person works under a contract of service in the construction industry; and
- (b)** an award referred to in schedule 1A, or the regulations, prescribe a weekly rate of pay for work of that kind (subject to any limitation as to classifications referred to in that schedule or the regulations); and
- (c)** the person's employer has registered with the Board as an employer for the purposes of this Act; and
- (d)** the person's employer and the Board have agreed that the Act should apply to the person.

**(1B)** A person is within the ambit of this subsection if—

- (a)** the person has been employed as a construction worker within the ambit of subsections (1) or (1A); and
- (b)** the person is seconded to a relevant association to act as an officer or employee of the association after being granted leave without pay by an employer in the construction industry; and
- (c)** the relevant association is registered with the Board for the purposes of this provision; and
- (d)** the person is not (and does not become) a member of the governing body of the relevant association,

but without affecting an accrued effective service entitlement, this subsection ceases to apply to the person if the person attains an effective service entitlement of 2 600 days.;

- (f)** by inserting after subsection (2) the following subsection:

**(2A)** Where this Act applies to employment by virtue of subsection (1B), the relevant association will be taken to be the employer of the person (as a construction worker) for the purposes of this Act.;

(g) by inserting after subsection (5) the following subsection:

(6) In this section—

"**relevant association**" means an association of employees that is able to represent the industrial interests of persons employed in the construction industry.

#### **Amendment of s. 14—Effective service entitlement**

**5. Section 14 of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsections:

(2) A person will be credited with one day of effective service for each day that he or she works as a construction worker (and the aggregate of those days of effective service will be the worker's aggregate effective service entitlement).

(2A) However, a person cannot be credited with more than five days of effective service in any week (and accordingly cannot be credited with more than 260 days of effective service in a financial year).;

(b) by striking out from subsection (3)(a) "120 months" and substituting "2 600 days";

(c) by striking out from subsection (4)(a) "84 months" and substituting "1 820 days";

(d) by striking out from subsection (4)(b) "120 months" and substituting "2 600 days";

(e) by inserting in subsection (4) "or where the construction worker continues to be employed by an employer within the construction industry" after "(either wholly or in part)".

#### **Substitution of s. 15**

**6. Section 15 of the principal Act is repealed and the following section is substituted:**

##### **Crediting effective service under this Act and the Long Service Leave Act**

15. (1) If a person employed as a construction worker commences work in a different capacity in the service of the same employer, the person's continuity of service is preserved and any period of effective service credited under this Act will be credited to the person under the *Long Service Leave Act 1987* (on the basis that five days of effective service under this Act is equivalent to seven days of service under the other Act) (and an effective service so credited will then be cancelled under this Act).

(2) If a person employed in a capacity other than as a construction worker commences work as a construction worker in the service of the same employer, the person's continuity of service is preserved and the period of that person's service calculated in accordance with the *Long Service Leave Act 1987* up to the point of change in the nature of employment will be credited as effective service for the purposes of this Act (on the basis that seven days of service under the other Act is equivalent to five days of effective service under this Act).

(3) If—

(a) a person's service under the *Long Service Leave Act 1987* includes a period of effective service credited under subsection (1); and

- (b) the person becomes entitled to long service leave, or to a payment in lieu of long service leave, under that Act,

the Board must pay to the person's employer an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260}$$

where—

- A is the amount payable
- OWP is the person's ordinary weekly pay applicable under the *Long Service Leave Act 1987*
- D is the effective service entitlement of the person as a construction worker under this Act (expressed in days).

(4) If—

- (a) a person's effective service entitlement under this Act includes a period of service credited under subsection (2); and
- (b) the person becomes entitled to long service leave, or to a payment on account of long service leave, under this Act,

the Board may recover from the person's employer (being the employer referred to in subsection (2)) an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{365}$$

where—

- A is the amount payable
- OWP is the person's ordinary weekly pay applicable under this Act
- D is the person's period of continuous service accrued under the *Long Service Leave Act 1987* at the time that the person commenced work as a construction worker (expressed in days).

**Amendment of s. 16—Long service leave entitlement**

7. Section 16 of the principal Act is amended—

- (a) by striking out from subsection (1) "120 months" and substituting "2 600 days";
- (b) by striking out subsection (4a).

**Amendment of s. 17—Cessation of employment**

8. Section 17 of the principal Act is amended—

- (a) by striking out from subsection (1) "84 months" (twice occurring) and substituting, in each case, "1 820 days";
- (b) by striking out from subsection (1) "120 months" (wherever occurring) and substituting, in each case, "2 600 days";
- (c) by striking out the formula that appears in subsection (1), and all material that follows the formula in that subsection, and substituting:

$$A = \frac{OWP \times D \times 1.3}{260}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under this Act as at—

- if the worker has died—the day of death;
- in any other case—the day on which the person ceased work as a construction worker

D is the effective service entitlement (expressed in days).

**Substitution of s. 18**

9. Section 18 of the principal Act is repealed and the following section is substituted:

**Preservation of entitlements in certain cases**

18. (1) If—

- (a) a person who has an effective service entitlement ceases to be employed as a construction worker; and
- (b) the person is not entitled to long service leave or a payment for *pro rata* long service leave; and
- (c) the person commences work as a supervisor in the construction industry within 36 months after cessation of his or her employment as a construction worker; and



- (d) the person provides notice of his or her work as a supervisor to the Board in accordance with the regulations within six months after the person commences work as a supervisor in the construction industry (or within such longer period as the Board may, in its absolute discretion, allow),

the effective service entitlement is preserved.

(2) If the person (or his or her personal representative) satisfies the Board that the aggregate period of work in the construction industry (as a construction worker and subsequently as a supervisor) totals 1 820 working days or more, the Board must pay to the person (or his or her personal representative) an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260}$$

where—

- A is the amount payable
- OWP is the person's ordinary weekly pay applicable under this Act
- D is the effective service entitlement preserved under subsection (1)(expressed in days).

(3) In this section—

"supervisor" means a person (other than a person within the ambit of section 5(1)) who is responsible for the daily on site supervision of works.

**Substitution of ss. 20 to 20B**

10. Sections 20 to 20B (inclusive) of the principal Act are repealed and the following section is substituted:

**The Construction Industry Fund**

20. (1) The Construction Industry Fund and the Electrical and Metal Trades Fund are combined and continue in existence as the *Construction Industry Fund*.

(2) The Construction Industry Fund will be administered by the Board.

(3) The Construction Industry Fund will consist of—

- (a) money standing to the credit of the Construction Industry Fund and the Electrical and Metal Trades Fund immediately before the commencement of this section; and
- (b) levies received by the Board from employers; and
- (c) income and accretions produced by the investment of money from the Fund; and
- (d) money advanced to the Board for the purposes of the Fund; and

- (e) penalties and fines recovered by the Board under this Act; and
  - (f) other money payable to the Fund under this Act.
- (4) There will be paid from the Construction Industry Fund—
- (a) any long service leave benefits that the Board is liable to pay under this Act; and
  - (b) the costs incurred by the Board in performing its functions under this Act; and
  - (c) other money authorised to be paid from the Fund under this Act.

**Amendment of s. 20C—Exemption from taxes and charges**

11. Section 20C of the principal Act is amended by striking out "Funds" (twice occurring) and substituting, in each case, "Fund".

**Substitution of s. 21**

12. Section 21 of the principal Act is repealed and the following section is substituted:

**Investment of the Fund**

21. (1) The Board may invest money that is not immediately required for the purposes of the Fund.

(2) The Board must, when investing the money, take into account policies and guidelines (if any) determined by the Treasurer after consultation with the Minister.

**Amendment of s. 22—Loans for training purposes**

13. Section 22 of the principal Act is amended by striking out from subsection (1) "Funds" and substituting "Fund".

**Amendment of s. 23—Borrowing by the Board**

14. Section 23 of the principal Act is amended by striking out from subsection (1) "Funds" and substituting "Fund".

**Amendment of s. 24—Investigation of the Fund**

15. Section 24 of the principal Act is amended—

- (a) by striking out from subsection (1) "Funds" and substituting "Fund";
- (b) by striking out from subsection (3) "Funds" and substituting "Fund";
- (c) by striking out from subsection (4a) "Funds" and substituting "Fund".

**Amendment of s. 25—Accounts and audit**

16. Section 25 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

- (2) The Board must cause its accounts to be audited at least once each year by a registered company auditor or the Auditor-General.
- (3) The Auditor-General may at any time audit the accounts of the Board.

**Amendment of s. 26—Imposition of levy**

17. Section 26 of the principal Act is amended—

- (a) by striking out from subsection (2) "(excluding any amounts by way of special rates or allowances)";
- (b) by striking out subsections (3), (4) and (5) and substituting the following subsection:
  - (3) No levy is payable by an employer in respect of—
    - (a) a construction worker who is employed by the employer for less than three days in a month; or
    - (b) subject to an exception prescribed by the regulations—an apprentice.

**Amendment of s. 33—The Appeals Tribunal**

18. Section 33 of the principal Act is amended by striking out from subsection (2) "President of the Industrial Court" and substituting "Senior Judge of the Industrial Relations Court of South Australia".

**Insertion of new s. 37A**

19. The following section is inserted immediately before section 38 of the principal Act:

**Self-employed contractors**

37A. (1) A self-employed contractor in the construction industry may, on application to the Board in a form approved by the Board, be registered as a self-employed contractor under this section.<sup>1</sup>

<sup>1</sup> A person registered as a self-employed contractor will be called a "registered contractor" for the purposes of this section.

(2) A registered contractor is eligible to participate in an investment scheme established by the Board for the purposes of this section.

(3) If—

- (a) a registered contractor had previously been a construction worker; and
- (b) the registered contractor was not entitled to long service leave or a payment for *pro rata* long service leave when he or she ceased work as a construction worker; and
- (c) the registered contractor commenced work as a self-employed contractor in the construction industry within 36 months after cessation of his or her employment as a construction worker; and
- (d) the application for registration was made within six months after commencing work as a self-employed contractor in the construction industry (or within such longer period as the Board may, in its absolute discretion, allow),

any effective service entitlement is preserved on registration.

(4) The following provisions apply to the investment scheme established by the Board for the purposes of this section:

- (a) the Board will, for the purposes of the scheme, before the commencement of each financial year—
- (i) set a contribution rate; and
  - (ii) set an interest rate,
- for the financial year; and
- (b) a registered contractor may then, in respect of each (or any) period prescribed by the regulations, pay to the Board an amount equal to the relevant contribution rate (and a payment may be made by a registered contractor in advance or, with the approval of the Board, in arrears); and
- (c) the registered contractor will then, in accordance with a scheme prescribed by the regulations (but subject to this section), be credited by the Board with—
- (i) the prescribed number of days of effective service entitlements; and
  - (ii) the amount of the payment; and
  - (iii) interest in accordance with the rate set under paragraph (a)(ii).

(5) A payment under subsection (4)(b) must be accompanied by a return in a form approved by the Board containing information as may be prescribed or required by the Board.

(6) A registered contractor who attains an effective service entitlement of 2 600 days (including any effective service entitlement preserved under subsection (3)) is entitled to an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260} + CI$$

where—

- A is the amount payable
- OWP is the registered contractor's ordinary weekly pay applicable under this Act (applying any presumption prescribed by the regulations)
- D is the effective service entitlement preserved under subsection (3) (or, if no such entitlement is preserved, zero)
- CI is the total of the registered contractor's entitlement credited under subsection (4)(c)(ii) and (iii).

(7) If, on application to the Board under this subsection in a form approved by the Board, the Board is satisfied that—

- (a) —
  - (i) a registered contractor has attained an effective service entitlement of 1 820 days (including any effective service entitlement preserved under subsection (3)); or
  - (ii) a registered contractor has attained an effective service entitlement of less than 1 820 days and has previously had an effective service entitlement of 2 600 days or more; and
- (b) the registered contractor has—
  - (i) died; or
  - (ii) ceased to work in the construction industry because of physical or mental disability that will prevent him or her from working in the construction industry in the future, or because of some other significant pressing necessity; or
  - (iii) retired from his or her work and does not intend to work in the future,

the Board must pay to the registered contractor (or his or her personal representative) an amount calculated in the same manner as under subsection (6).

(8) If—

- (a) on application to the Board under this subsection in a form approved by the Board, the Board is satisfied that a registered contractor has ceased work in the construction industry; and
- (b) the registered contractor does not have an entitlement under subsection (6) or (7),

the Board must pay to the registered contractor an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260} + C$$

where—

- A is the amount payable
- OWP is the registered contractor's ordinary weekly pay applicable under this Act (applying any presumption prescribed by the regulations)

- D is any effective service entitlement preserved under subsection (3), subject to the qualification that if the aggregate of the registered contractor's effective service entitlement preserved under subsection (3) and the registered contractor's effective service entitlement credited under subsection (4)(c)(i) does not equal or exceed 1 820 days, then D will be taken to be zero
- C is the total of the registered contractor's entitlement credited under subsection (4)(c)(ii) (without interest).

(9) If the Board rejects an application under this section, the Board must give the applicant written notice of its decision (setting out a brief statement of the Board's reasons for making its decision).

**Amendment of s. 45—Expiation of offences**

20. Section 45 of the principal Act is amended by striking out from subsection (4) "or the Electrical and Metal Trades Fund".

**Insertion of schedule 1A**

21. The following schedule is inserted after schedule 1 of the principal Act:

**SCHEDULE 1A**  
*Optional Coverage*

*Award—General Application*

Fibrous Plasterers (Factory) Award

*Award—Limited Application*

The National Joinery and Building Trades Product Award 1993, but only in relation to the following classifications and only in the terrazzo or concrete casting industries:

Carpenter  
Joiner  
Carpenter and Joiner  
Tradesperson  
Machinist  
Terrazzo Assistant  
Factory Hand  
Adult Trainee—Terrazzo Worker first six months.

**Substitution of schedule 3**

22. Schedule 3 of the principal Act is repealed and the following schedule is substituted:

**SCHEDULE 3**  
*Preservation and Conversion of Entitlements—1995 Act*

**Interpretation**

1. In this schedule—

"1995 Act" means the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1995*.

**Conversion of entitlements**

2. If a person has an effective service entitlement immediately before the commencement of the 1995 Act, then—

- (a) the effective service entitlement will, on the commencement of the 1995 Act, be converted to an effective service entitlement expressed in days in accordance with the following formula:

$$E = \frac{EM \times 260}{12}$$

where—

E is the effective service entitlement (expressed in whole days rounded up to the next day)

EM is the person's aggregate effective service entitlement under this Act immediately before the commencement of the 1995 Act (expressed in months);

- (b) when leave is taken after the commencement of the 1995 Act, it will be taken that the person is first taking leave attributable to an effective service entitlement accrued before the commencement of the 1995 Act (as converted under paragraph (a)) (until that entitlement is expended); and
- (c) despite any other provision of this Act, insofar as a person is taking leave that is attributable to an effective service entitlement accrued before the commencement of the 1995 Act, the person's ordinary weekly pay in respect of that leave will be taken to be an amount determined as if the 1995 Act had not been enacted.

**Continuity of application**

3. If—

- (a) a person was, immediately before the commencement of the 1995 Act—
- (i) in employment that qualified the person as a construction worker under this Act; and
  - (ii) registered with the Board; and
- (b) this Act would, but for this subsection, cease to apply to work in that form of employment on the commencement of the 1995 Act,

then this Act will, despite the enactment of the 1995 Act (and without limiting the application of this Act to a person who subsequently works as a construction worker in any other form of employment), continue to apply to the person while he or she remains in that form of employment with the same employer (as if the person continued to be a construction worker within the meaning of this Act).

**Special rates—Self-employed contractors**

4. The Board may, on the commencement of the 1995 Act, for the purposes of section 37A of this Act—

- (a) set a contribution rate; and
- (b) set an interest rate,

for the 1994/1995 financial year (despite the commencement of that financial year).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor