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ELIZABETHAE II REGINAE

A.D. 1990

No. 35 of 1990

An Act to amend the Long Service Leave (Building Industry) Act, 1987.

[Assented to 26 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Long Service Leave (Building Industry) Act Amendment Act, 1990*.

(2) The *Long Service Leave (Building Industry) 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.

Substitution of s. 1

3. Section 1 of the principal Act is repealed and the following section is substituted:

Short title

1. This Act may be cited as the *Construction Industry Long Service Leave Act, 1987*.

Amendment of principal Act

4. The principal Act is amended—

(a) by striking out “building worker” wherever it appears and substituting, in each case, “construction worker”;

(b) by striking out “building worker’s” wherever it appears and substituting, in each case, “construction worker’s”;

and

(c) by striking out “building workers” wherever it appears and substituting, in each case, “construction workers”.

Interpretation

5. Section 4 of the principal Act is amended—

(a) by striking out the definition of “the Board” and substituting the following definition:

“the Board” means the Construction Industry Long Service Leave Board;

- (b) by striking out “(including off site work carried out by or on behalf of a builder whose work is carried out partially on site and partially off site)” from paragraph (a) of the definition of “building work”;
- (c) by striking out the definition of “building worker” and substituting the following definitions:
- “construction industry” means the building industry or the electrical and metal trades industry;
- “construction work” means building work or electrical or metal trades work;
- “construction worker” means a person to whose employment this Act applies (see section 5) and includes a former construction worker;;
- (d) by striking out the definition of “contribution”;
- (e) by inserting after the definition of “effective service” the following definitions:
- “the electrical and metal trades industry” means the industry of carrying out electrical or metal trades work:
- “electrical or metal trades work” means work that involves—
- (a) electrical or metal work on a building site, including on site work that is related to the construction, erection, installation, extension, alteration, maintenance, repair, servicing or dismantling of any plant, plant facility or equipment;
- (b) the construction, erection, installation, extension or dismantling (on site) of—
- (i) a transmission line, or any plant, plant facility or equipment used in connection with the supply of electricity;
- (ii) a lift or escalator;
- or
- (iii) any air-conditioning, ventilation or refrigeration system or equipment;
- (c) the alteration, maintenance, repair or servicing (on site) of any works, plant, plant facility or equipment referred to in paragraph (b);
- (d) other engineering projects involving electrical or metal work;;
- (f) by striking out the definition of “the Fund” and substituting the following definition:
- “the Funds” means the Construction Industry Fund and the Electrical and Metal Trades Fund referred to in Part IV;;
- (g) by striking out the definition of “prescribed percentage”;
- and
- (h) by striking out the definition of “working day”.

Application of this Act

6. Section 5 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:
- (1) Subject to this section, this Act applies to a person’s employment if—
- (a) that person works under a contract of service in the construction industry;

(b) an award referred to in the first schedule or the regulations prescribes a weekly rate of pay for work of that kind;

and

(c) the employment involves on site work that makes up the whole, or a proportion of at least one-half, of the period of employment over—

(i) the whole period of employment;

(ii) the first month of employment;

or

(iii) any three-month period of employment,

but without effecting any accrued effective service entitlement, this Act ceases to apply to employment if the employee has not worked on site for the last three months.;

and

(b) by striking out subsection (3) and substituting the following subsection:

(3) Where—

(a) a person carries out construction work on premises owned or occupied by his or her employer (not being premises intended for subsequent sale or lease);

and

(b) that is the sole construction work in which the person is engaged by that employer,

this Act does not apply to that employment.

Substitution of heading

7. The heading to Part II of the principal Act is repealed and the following heading is substituted:

PART II

THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE BOARD.

The Board

8. Section 6 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The *Construction Industry Long Service Leave Board* is established.

Membership of Board

9. Section 7 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The Board consists of seven members, appointed by the Governor, of whom—

(a) one (who will be the presiding officer of the Board) will be a person nominated by the Minister;

(b) three will be nominated by the Minister after taking into account the recommendations of employer associations, to represent the interests of employers in the construction industry;

and

- (c) three will be nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council, to represent the interests of construction workers.

Conditions of membership

10. Section 8 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

- (2) The Governor may remove a member of the Board from office if the member—
- (a) becomes mentally or physically incapable of carrying out satisfactorily the duties of office;
 - (b) is guilty of neglect of duty or dishonourable conduct;
- or
- (c) having been appointed to represent the interests of employers or construction workers in the construction industry, ceases, in the opinion of the Governor, to be a suitable person to act as such a representative.

Proceedings at meetings of the Board

11. Section 10 of the principal Act is amended—

- (a) by striking out from subsection (3) “Three” and substituting “Four”;
- (b) by striking out from subsection (4) “three” and substituting “four”.

Preservation of entitlements in certain cases

12. Section 18 of the principal Act is amended—

- (a) by striking out from paragraph (c) of subsection (1) “building industry” and substituting “construction industry”;

and

- (b) by striking out from subsection (2) “building industry” and substituting “construction industry”.

Substitution of s. 20

13. Section 20 of the principal Act is repealed and the following sections are substituted:

The Construction Industry Fund

20. (1) The Long Service Leave (Building Industry) Fund continues 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 fund immediately before the commencement of this section;
 - (b) levies received by the Board from employers, other than levies that must be credited to the Electrical and Metal Trades Fund;
 - (c) such proportion of the proceeds of investments made by the Board as the Board determines to be attributable to the investment of the fund;
 - (d) any money advanced to the Board for the purposes of the fund;
 - (e) such proportion of the penalties and fines recovered under this Act as the Board determines to be payable to the fund;

and

(f) any other money payable to the fund under this Act.

(4) There will be paid from the Construction Industry Fund—

(a) the long service leave benefits that the Board is liable to pay under this Act (but subject to any contribution payable from the Electrical and Metal Trades Fund);

(b) such of the costs incurred by the Board in the performance of its functions as the Board determines to be reasonably payable from the fund;

(c) any other money authorized to be paid from the fund under this Act.

The Electrical and Metal Trades Fund

20a. (1) The Long Service Leave (Electrical Contracting and Metal Trades) Fund continues in existence as the *Electrical and Metal Trades Fund*.

(2) The Electrical and Metal Trades Fund will be administered by the Board.

(3) The Electrical and Metal Trades Fund will consist of—

(a) money standing to the credit of the fund immediately before the commencement of this section;

(b) levies received by the Board from employers that must be credited to the fund;

(c) such proportion of the proceeds of investments made by the Board as the Board determines to be attributable to the investment of the fund;

(d) any money advanced to the Board for the purposes of the fund;

(e) such proportion of the penalties and fines recovered under this Act as the Board determines to be payable to the fund;

and

(f) any other money payable to the fund under this Act.

(4) There will be paid from the Electrical and Metal Trades Fund—

(a) any money payable under subsection (6);

(b) a proportion of any long service leave benefit that the Board is liable to pay under this Act in respect of a construction worker to whom the second schedule applies (the proportion being equal to the amount payable in respect of the effective service entitlement credited to the construction worker under that schedule);

(c) such other costs incurred by the Board in the performance of its functions as the Board determines to be reasonably payable from the fund;

(d) any other money authorized to be paid from the fund under this Act.

(5) The Board may, with the approval of the Treasurer, advance money from the Construction Industry Fund to the Electrical and Metal Trades Fund.

(6) Any money paid under subsection (5) (and any money advanced to the Long Service Leave (Electrical Contracting and Metal Trades) Fund before the commencement of this section)—

(a) will be a charge on the Electrical and Metal Trades Fund;

(b) must be repaid to the Construction Industry Fund in accordance with the directions of the Treasurer;

and

(c) until repaid, will bear interest at a rate fixed by the Treasurer in accordance with subsection (7).

(7) The rate of interest fixed by the Treasurer under subsection (6)—

(a) must be fixed at the beginning of each half-year for the ensuing period of six months;

(b) must not be fixed until after consultation with the Board;

and

(c) must not be fixed at a rate that is less than the average rate of interest on any new investments made by the Board during the period of six months immediately preceding the date on which the rate is fixed.

(8) In subsection (8)—

“half-year” means—

(a) a period beginning on 1 January and ending on 30 June in any year;

(b) a period beginning on 1 July and ending on 31 December in any year.

Adjustment between the Funds

20b. The Board may, on the basis that an amount has been paid to or from the wrong fund under this Act, or for any other proper cause, make such adjustments (including the adjustment of interest) between the Funds as may be determined by the Board.

Exemption from taxes and charges

20c. The Funds, and all transactions relating to the Funds, are exempt from all taxes and other charges imposed under the law of the State.

Investment of the Funds

14. Section 21 of the principal Act is amended by striking out from subsection (1) “the Fund” and substituting “the Funds”.

Loans for training purposes

15. Section 22 of the principal Act is amended—

(a) by striking out from subsection (1) “the Fund” and substituting “the Funds”;

and

(b) by striking out from subsection (1) “building industry” and substituting “construction industry”.

Borrowing by the Board

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

Investigation of the Funds

17. Section 24 of the principal Act is amended—

(a) by striking out from subsection (1) “the Fund” and substituting “the Funds”;

and

(b) by striking out from subsection (3) “the Fund” and substituting “the Funds”.

Substitution of heading

18. The heading to Part V is repealed and the following heading is substituted:

PART V
LEVIES.

Substitution of s. 26

19. Section 26 of the principal Act is repealed and the following section is substituted:

Imposition of levy

26. (1) An employer in the construction industry is liable to pay a levy to the Board under this section.

(2) Subject to this section, the levy payable by an employer is the prescribed percentage of the total remuneration (excluding any amounts by way of special rates or allowances) paid to each of the employer's construction workers during the period to which the levy relates.

(3) No levy is payable by an employer in respect of a construction worker who is employed by the employer for less than three days in any month.

(4) The regulations may, for the purposes of subsection (2), prescribe two percentages—

(a) one being a percentage payable by any employer who was, immediately before the commencement of the *Long Service Leave (Building Industry) Act Amendment Act, 1990*, bound by the *Metal Industry (Long Service Leave) Award 1984*, in respect of any remuneration (excluding any amounts by way of special rates or allowances) paid to a construction worker in respect of work of a kind for which a weekly rate of pay is fixed by an award referred to in the third schedule;

and

(b) one being a percentage payable in respect of all other circumstances.

(5) Any part of a levy that is paid to the Board at the rate referred to in subsection (4) (a) must be credited to the Electrical and Metal Trades Fund.

(6) The regulations may—

(a) declare payments made to or for the benefit of a construction worker that will be taken as constituting remuneration for the purposes of this section;

and

(b) declare payments made to or for the benefit of a construction worker that will not be taken as constituting remuneration for the purposes of this section.

Returns by employers

20. Section 27 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) Every employer in the construction industry must, within 21 days after the end of each period prescribed by the regulations ("the return period"), furnish the Board with a return in a form approved by the Board containing such information as may be prescribed or required by the Board.

(2) The return must be accompanied by the levy payable by the employer in respect of the return period.;

and

(b) by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

(b) an employer includes in a return information that is, to the knowledge of the employer, false or misleading in a material particular;

Recovery on default

21. Section 28 of the principal Act is amended by striking out “contribution” wherever it occurs and substituting, in each case, “levy”.

Penalty for late payment

22. Section 29 of the principal Act is amended—

(a) by striking out from subsection (1) “contribution” and substituting “levy”;

and

(b) by striking out from paragraph (b) of subsection (1) “twice the amount assessed” and substituting “the prescribed amount”.

Recovery of levies

23. Section 31 of the principal Act is amended by striking out “contribution” and substituting “levy”.

Refund of overpayments

24. Section 32 of the principal Act is amended by striking out “contribution” and substituting “levy”.

Effect of pending appeal

25. Section 37 of the principal Act is amended by striking out “contribution” wherever it occurs and substituting, in each case, “levy”.

Records

26. Section 40 of the principal Act is amended by inserting “levies or other” after “in respect of the payment of” in subsection (1).

Evidentiary provision

27. Section 44 of the principal Act is amended by striking out from paragraph (c) of subsection (1) “amount of wages” and substituting “remuneration”.

Expiation of offences

28. Section 45 of the principal Act is amended—

(a) by striking out from subsection (1) “Section 26”;

and

(b) by striking out from subsection (3) “Section 26—\$200”.

Substitution of first schedule

29. The first schedule to the principal Act is repealed and the following schedule is substituted:

FIRST SCHEDULE

CONSTRUCTION WORKERS AWARDS

State

Building and Construction Workers (State) Award
 Building Trades (South Australia) Construction Award
 Carpenters and Joiners (General) Award
 Electrical Contracting Industry (South Australia) Award
 Metal Industry (South Australia) Award
 Plumbers and Gasfitters (South Australia) Award Part I On Site Construction
 Stone Masons and Monumental Workers Award

Federal

Carpenters and Joiners Award
 Electrical Contracting Industry Award 1988 Part 2
 Glass Merchants and Glazing Contractors (South Australia) Award
 National Building Trades Construction Award
 National Metal and Engineering On-Site Construction Industry Award
 Plumbers and Gasfitters (Southern States) Construction Agreement
 Sprinkler Pipe-Fitters Award.

Substitution of second schedule

30. The second schedule to the principal Act is repealed and the following schedule is substituted:

SECOND SCHEDULE

EFFECTIVE SERVICE ENTITLEMENT—ELECTRICAL OR METAL TRADES

Interpretation

1. In this schedule—

“the 1990 Act” means the *Long Service Leave (Building Industry) Act Amendment Act, 1990*;

“the prescribed period” means the period of seven years immediately preceding the commencement of the 1990 Act.

Application of schedule

2. This schedule applies to a person who becomes a construction worker on the commencement of the 1990 Act by virtue of the application of this Act to persons employed in the electrical and metal trades industry.

Crediting of effective service entitlement

3. (1) A person to whom this schedule applies is, on the commencement of the 1990 Act, in respect of service in the electrical and metal trades industry before that commencement, entitled to be credited with an effective service entitlement calculated on the basis that—

(a) any service that occurred during the prescribed period;

and

(b) in the case of a person who was continuously employed by the same employer over the whole of the prescribed period—any service with that employer over a continuous period up to the commencement of the prescribed period,

will give rise to an effective service entitlement equal to two-thirds of the effective service entitlement that would accrue under this Act in respect of comparable service in the building industry.

(2) Subsection (1) is subject to the following qualifications:

(a) a person will not be credited with an entitlement for any service for which he or she has taken long service leave, or received a payment on account of long service leave, under an award or agreement in force before the commencement of the 1990 Act;

and

(b) if, immediately before the commencement of the 1990 Act, the person had an entitlement to long service leave (or an entitlement to receive a payment on account of long service leave) under an award or agreement by virtue of completing 15 years (or more) service with the same employer, the person will not be credited with an entitlement under this Act in respect of that service.

Substitution of third schedule

31. The third schedule to the principal Act is repealed and the following schedule is substituted:

THIRD SCHEDULE**AWARDS RELEVANT TO SPECIAL LEVY**

Electrical Contracting Industry Award 1988 Part 2

National Metal and Engineering On-Site Construction Industry Award

Transitional provision

32. (1) The Construction Industry Long Service Leave Board is the same body as the Board established under the principal Act and in existence immediately before the commencement of this Act.

(2) The offices of all members of the Board become vacant on the commencement of this Act.

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

D. B. DUNSTAN, Governor