TASMANIA

CONSTRUCTION INDUSTRY (LONG SERVICE) AMENDMENT BILL 2003

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CONSTRUCTION INDUSTRY (LONG SERVICE) AMENDMENT BILL 2003

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, Clerk of the House
8 April 2003

(Brought in by the Minister for Infrastructure, the Honourable James Glennister Cox)

A BILL FOR

An Act to amend the Construction Industry (Long Service) Act 1997

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:

Short title

1. This Act may be cited as the Construction Industry (Long Service) Amendment Act 2003.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.
Principal Act

3. In this Act, the Construction Industry (Long Service) Act 1997* is referred to as the Principal Act.

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

   (a) by inserting the following definition after the definition of “corresponding law”:

   “employee” means a person engaged in the construction industry;

   (b) by omitting the definition of “new scheme” and substituting the following definition:

   “new scheme” means the scheme established under the Trust Deed;

   (c) by omitting the definition of “Standard Industrial Classification” and substituting the following definitions:

   “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

*No. 83 of 1997
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.

Sections 5 and 6 substituted

5. Sections 5 and 6 of the Principal Act are repealed and the following sections are substituted:

Registration of employers

5. (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).

Registration of employees

6. (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.

Section 7 amended (Levy)

6. Section 7(2)(a) of the Principal Act is amended by omitting “section 6(1)(b)” and substituting “section 5(1)(b)”.

Sections 8 and 9 substituted

7. Sections 8 and 9 of the Principal Act are repealed and the following sections are substituted:

Records, returns and information

8. (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.

Enforcement

9. (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.

Extension of limitation period

9A. (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.

Time of occurrence of offence

9B. (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.

Section 12 amended (Rights, entitlements, benefits and obligations)

8. Section 12 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

(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.