FACT SHEET

Construction Industry (Long Service) Amendment Bill 2013

The *Construction Industry (Long Service) Amendment Bill 2013* (the Bill) proposes amendments to the *Construction Industry (Long Service) Act 1997* (the Act).

The Act establishes a portable long service scheme for employees in the construction industry. The scheme is administered by TasBuild Limited, a private trustee company.

Under the construction industry portable long service scheme, employees accrue long service entitlements as a result of their time engaged in the construction industry, rather than as a consequence of continuous employment with one employer. They are able to access their entitlements on completing 10 years of relevant employment. This can be achieved through a number of different periods of employment with different employers.

This is different from other long service leave legislation and schemes in Tasmania, where employees only become entitled to long service leave on completing a period of continuous employment (generally 10 years) with a single employer.

TasBuild administers the scheme through its Trust Deed and Rules. It sets a contribution rate that employers must pay in relation to each of their employees who work in relevant employment. This is a percentage of the employee's ordinary weekly gross wages and is currently set at two percent.

An employee has a long service entitlement once he or she has reached 10 years of relevant employment, which can be achieved through a number of different periods of employment with different employers.

The Bill proposes a number of amendments to the legislation. These amendments are aimed at:

- clarifying who is and is not covered by the portable long service scheme;
- adding to and amending existing definitions to make the Act easier to interpret and apply; and
- making any other amendments that may be required to improve the operation and application of the Act.

One of the key aspects of the amendments is to clarify who is and is not covered by the scheme – without making any significant change to the scope of the Act. It is not intended to increase or decrease coverage.

Coverage under the Act is currently determined by engagement in the "construction industry", which is defined as any industry involved in any construction described in Divisions C (Manufacturing) and E (Construction) in the Australian and New Zealand Standard Industrial Classification (ANZSIC) of 1993.

Under the proposed amendments, coverage under the Act will no longer be determined by a definition of the construction industry. Instead, coverage will be made clearer by including a description of "construction work", which references relevant industry activities which are listed in a new schedule (Schedule 1).

The activities listed in Schedule 1 are aligned with the updated 2006 edition of ANZSIC.

Construction work is defined in the proposed new section 3B as an activity described in Schedule 1 that includes:

- construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition, maintenance, preparation, storing, or repairs, performed on site as part of a Schedule 1 activity (construction work activity);

- transportation of materials in connection with a construction work activity if the person doing the transportation (or someone else employed or engaged by their employer) is also carrying out the construction work activity on site; and

- manufacturing of a product occurring in connection with a construction work activity if the person doing the manufacturing (or someone else employed or engaged by their employer) is also carrying out the construction activity on site.

To determine whether or not a worker is covered by the scheme, section 3B and Schedule 1 will need to be read in conjunction with two other proposed new provisions (new section 3A "What is relevant employment", and section 3C "Who is an employer or employee").

Relevant employment (proposed new section 3A) includes:

- being employed or engaged wholly or predominantly to carry out construction work;

- if employed or engaged in manufacturing, where the employer is wholly or predominantly involved in construction work (for example, an employee making kitchen cabinets in a joinery workshop for a company that installs those cabinets on-site); and

- if the person is employed or engaged in a contractual relationship, where he or she is employed or engaged wholly or predominantly for the carrying out of construction work, for the duration of the contractual relationship.

The word "predominantly" is used in many of the new provisions that describe what work is included in the scope, or alternatively excluded from the scope. It is defined to mean "90% or more or such other percentage as is prescribed".

For clarity, relevant employment specifically excludes:

- being employed or engaged wholly or predominantly for administration, clerical and/or managerial purposes; and
- performing maintenance work for an employer whose primary commercial function does not involve construction work (for example, maintenance worker at a hospital or hotel).

To be covered by the scheme, a person must also be an employee for the purposes of the Act. Under the proposed new section 3C, an "employee" includes:

- a person, who is employed or engaged in relevant employment under a contract with another person – limited to cases where the other person (the employer) has a statutory obligation to make superannuation contributions in respect of the worker;
- a person employed or engaged in relevant employment under a contract with a labour hire agency to undertake work for a third party. The Bill specifies criteria, including that the person must personally undertake the work, and is paid not less than the "minimum amount" ($450 gross per calendar month or an amount as prescribed for a period) for the component of the remuneration that is for his or her personal labour or skills; and
- an apprentice or trainee who is employed or engaged in relevant employment for at least 7.6 hours per calendar month in total.

The Bill includes transitional arrangements (in the proposed new section 17A) to address the situation that may arise where employees who are currently under the scheme no longer fall within the scope of the Act once the amendments commence (for example, due to the amended definition of employee, clarifications to coverage, etc).

In this instance, the employee will continue to be covered by the scheme unless:

- the employee ceases employment with the employer; or
- both parties agree to opt out of the arrangement; or
- within three months of reaching the next long service entitlement point, one of the parties decides to opt out.

Another feature of the Bill is a new provision (section 21A) which allows some employees, in very limited and specific circumstances, to continue under the TasBuild scheme when they are no longer in relevant employment. This "deemed relevant employment" is an entirely voluntary arrangement between the employer and employee. The employee and employer can make a joint application to TasBuild where:

- the employee has previously been employed in relevant employment for a minimum period of 5 years; and
- for at least the last 2 years of that period of relevant employment, the employee was continuously employed by a single employer; and
- the employee ceased to be in relevant employment but continued, without interruption, to be employed by that same employer for a purpose other than relevant employment.

If TasBuild approves the application, the employee continues to be covered by the scheme unless he or she leaves employment with the employer or one of the parties (the employee or employer) opts out. This can only be done within 3 months of a worker reaching a long service entitlement point (for example, at 10 years, 15 years or 20 years).

The other notable amendments are aimed at improving the administration and enforcement of the Act and the scheme. They have arisen as a result of issues and difficulties TasBuild has

experienced in administering the scheme. The changes the Bill makes to address these include:

- amendments allowing TasBuild to seek information, records and returns from a person it believes on reasonable grounds to be an employer;

- amendments giving TasBuild an additional power that enables it to determine whether there are reasonable grounds to believe a person is an employer. TasBuild can require the person to supply information, records and returns. If the requested information etc is not provided within 30 days, TasBuild is entitled to presume that the person is an employer for the purposes of the Act; and

- extension of the time limit within which TasBuild has to take proceedings where an employer has failed to make payments from 6 months to 12 months. This time limit is to run either from when TasBuild becomes or ought reasonably to have become aware that the payment was due, or, if the records, returns and information have been requested to calculate the amount of the payment, from when TasBuild receives the records, returns or information.