

TASMANIA

**CONSTRUCTION INDUSTRY (LONG SERVICE)
AMENDMENT BILL 2013**

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**CONSTRUCTION INDUSTRY (LONG SERVICE)
AMENDMENT BILL 2013**

*(Brought in by the Minister for Workplace Relations, the
Honourable David James O'Byrne)*

A BILL FOR

An Act to amend the *Construction Industry (Long Service) Act 1997* and to consequentially amend the *Long Service Leave (State Employees) Act 1994*

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) Amendment Act 2013*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.

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SERVICE) ACT 1997 AMENDED**

4. Principal Act

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

5. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of *commencement day*:

amending Act means the *Construction Industry (Long Service) Amendment Act 2013*;

ANZSIC Code means the Australian and New Zealand Standard Industrial Classification Code issued by the Australian Bureau of Statistics in 2006 (ABS Catalogue No. 1292.0), as amended from time to time;

- (b) by omitting the definition of *construction industry* and substituting the following definition:

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construction work – see section 3B;

- (c) by omitting the definitions of *corresponding law*, *employee* and *employer* and substituting the following definitions:

corresponding law means a law of another State or a Territory of the Commonwealth that provides for matters relating to long service entitlements in an industry involved in construction work;

current fund means the fund held by the company;

employed or engaged in relevant employment – see section 3A;

employee – see section 3C;

employer – see section 3C;

land includes –

- (a) an area of land whether or not built on or enclosed;
and
- (b) buildings, structures, plant and equipment on the area of land; and
- (c) any part of any land specified in paragraph (a) or (b);

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- (d) by inserting the following definitions after the definition of *new scheme*:

payment does not include a contribution;

predominantly means 90% or more or such other percentage as is prescribed;

- (e) by inserting the following definition after the definition of *previous scheme*:

relevant employment – see section 3A;

- (f) by omitting the definition of *Standard Industrial Classification*;

- (g) by omitting “scheme” first occurring from the definition of *Trust Deed* and substituting “scheme, as amended or substituted from time to time,”.

6. Sections 3A, 3B, 3C, 3D and 3E inserted

After section 3 of the Principal Act, the following sections are inserted in Part 1:

3A. What is relevant employment

- (1) For the purposes of this Act, a person is employed or engaged in relevant employment –
- (a) where the person is employed or engaged in any activity other than manufacturing, if the person is

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

- (b) where the person is employed or engaged in manufacturing, if –
 - (i) while the person is so employed or engaged, the person who employs or engages the first-mentioned person is wholly or predominantly involved in construction work; or
 - (ii) the company has made a determination, under the new scheme, that applies to the person so employed or engaged and either directly or indirectly results in the person being determined to be employed or engaged in relevant employment; or
- (c) where the person is employed or engaged in a contractual relationship, whether verbal or in writing, if the person is employed or engaged for the duration of the contractual relationship wholly or predominantly to carry out construction work; or

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- (d) where the company has made a determination, under the new scheme, that applies to the person and either directly or indirectly results in the person being determined to be employed or engaged in relevant employment.
- (2) For the purposes of this section, any period of employment or engagement of a person by another person includes –
- (a) leave (including any long service leave) taken by the person, while employed or engaged, that is paid for by the other person; and
 - (b) leave taken by the person –
 - (i) while the person is being paid workers compensation under the *Workers Rehabilitation and Compensation Act 1988*; and
 - (ii) while the person is employed or engaged in employment that is being made available under section 143L of the *Workers Rehabilitation and Compensation Act 1988*.
- (3) For the avoidance of doubt, a person is not employed or engaged in relevant

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employment if the person is employed or engaged, in any form, wholly or predominantly for any of the following purposes or any combination of such purposes:

- (a) administration;
 - (b) clerical;
 - (c) managerial;
 - (d) any other prescribed purpose.
- (4) Despite subsection (1), a person is not employed or engaged in relevant employment if –
- (a) the person only performs construction work for the purpose of maintaining the land owned, or leased, by the person employing or engaging the person; and
 - (b) the primary commercial function of the person employing or engaging the person does not involve construction work.

3B. What is construction work

- (1) For the purposes of this Act, construction work means –
- (a) an activity described in Schedule 1 that includes construction, erection, installation, reconstruction, re-

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- erection, renovation, alteration,
demolition, maintenance,
preparation, storing, or repairs,
performed on-site as part of that
activity; and
- (b) transportation of materials, if the transportation of materials occurs in connection with an activity specified in paragraph (a); and
 - (c) manufacturing of a product, if the manufacturing of the product occurs in connection with an activity specified in paragraph (a).
- (2) For the purposes of this section, transportation of materials occurs in connection with an activity specified in subsection (1)(a) if –
- (a) the same person performs the transportation and the activity; or
 - (b) both the person performing the transportation of materials and the person performing the activity specified in subsection (1)(a) are employed or engaged by the same person.
- (3) For the purposes of this section, manufacturing of a product occurs in connection with an activity specified in subsection (1)(a) if –

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- (a) the same person performs the manufacturing and the activity; or
- (b) both the person manufacturing the product and the person performing the activity specified in subsection (1)(a) are employed or engaged by the same person.

3C. Who is an employer or employee

- (1) For the purposes of this Act, a person (in this section the *relevant person*) is taken to be an employee of another person (in this section the *other person*), and the other person is taken to be the employer of the relevant person, if –
 - (a) the relevant person is employed or engaged in relevant employment under a contract with the other person that results in a statutory obligation on the other person to make superannuation contributions in respect of the relevant person; or
 - (b) the relevant person –
 - (i) is employed or engaged in relevant employment by virtue of being engaged under a contract with the other person, who is a labour hire agency, to perform work for someone (*the third party*)

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- other than the other person; and
- (ii) has not entered into a contract in respect of the work with the third party; and
 - (iii) is paid by the labour hire agency not less than the minimum amount for the component of the remuneration that is for his or her personal labour and skills; and
 - (iv) is wholly or principally remunerated under the contract for his or her personal labour and skills in performing the work; and
 - (v) if the labour hire agency is a corporation, is not an officer within the meaning of section 9 of the Corporations Act, of the corporation; or
- (c) the relevant person is employed or engaged in relevant employment, under an apprenticeship or contract of training, by the other person for

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at least 7.6 hours per calendar month in total.

- (2) In determining under subsection (1) whether a relevant person is an employee of another person, the fact that the relevant person, or a business or firm of the relevant person, has been assigned an Australian Business Number is not to be taken into account.
- (3) Despite subsection (1), a relevant person is only taken, for the purposes of this Act, to be the employee of another person under subsection (1), and the other person is only taken to be an employer of the relevant person under that subsection, while the relevant person is employed or engaged as specified in that subsection.
- (4) Despite subsection (1) –
 - (a) a person is not an employer of a relevant person under subsection (1) if that person –
 - (i) is an owner builder in respect of land; and
 - (ii) employs or engages the relevant person in relevant employment to perform construction work in respect of that land; and

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- (b) a relevant person is not the employee of a person if that person is not an employer, by virtue of paragraph (a), while the relevant person is performing construction work referred to in that paragraph.
- (5) For the purposes of subsection (4), a person is an owner builder in respect of land if –
- (a) at the time the person employs or engages a relevant person to perform construction work in respect of the land, the person is the owner of the land; and
 - (b) in the previous 5 years, the person has not performed construction work on more than 2 buildings of any classification, within the meaning of the *Building Act 2000*, on land owned by the person at the time the construction work is performed.
- (6) In this section –
- labour hire agency*** means a person whose business involves, or includes, the supply of workers to another person, whether by a single contract or a series of contracts;

minimum amount means –

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- (a) \$450 (gross) per calendar month; or
- (b) if an amount is prescribed in relation to a period, that amount for that period.

3D. Non-application of Act

- (1) This Act does not apply in respect of a person employed or engaged in relevant employment, if the person is eligible to accrue long service under one of the following in respect of that employment and section 21A does not apply to the person:
 - (a) Part 7 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*;
 - (b) *Long Service Leave (State Employees) Act 1994*.
- (2) The *Long Service Leave Act 1976* does not apply to a person employed or engaged in relevant employment under this Act.

3E. New scheme

- (1) The new scheme is to provide for the following matters:
 - (a) the registering of employers and employees under this Act;

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- (b) the long service entitlements of employees;
- (c) payments by the company, including refunds;
- (d) payments or contributions to the company, including the setting, estimation and collection of such payments or contributions;
- (e) the calculation of time periods;
- (f) in respect of self-employed workers –
 - (i) the voluntary application of the new scheme to self-employed workers; or
 - (ii) the non-application of the new scheme;
- (g) provision of information to the company;
- (h) the records required to be kept by employers;
- (i) the determination, on a case-by-case basis, of –
 - (i) whether work is or is not construction work within the meaning of this Act; or

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- (ii) whether a person is or is not an employer within the meaning of this Act; or
 - (iii) whether a person is wholly or predominantly involved in, or carrying out, construction work; or
 - (iv) whether a person should be registered under this Act; or
 - (v) whether a person is or is not employed or engaged in relevant employment within the meaning of this Act; or
 - (vi) a person's obligations or entitlements under the new scheme;
 - (j) the process for objections to determinations made under the new scheme;
 - (k) any matter necessary or expedient to give effect to the new scheme, including the making of rules by the company relating to funds established under the Trust Deed;
 - (l) any other prescribed matter.

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- (2) The new scheme, as in force immediately before the commencement of the amending Act, is taken to comply with this section.

7. Sections 5 and 6 substituted

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

5. Registration of employers

- (1) A person, other than a person to whom subsection (2) applies, must, within 90 days after becoming an employer of an employee, apply to the company for the company to register, under the new scheme, the person as an employer.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person who is, on the day the amending Act commences, an employer and who is not, on that day, registered, under the new scheme, as an employer must, within 90 days after that day, apply to the company for the company to register under the new scheme the person as an employer.

Penalty: Fine not exceeding 100 penalty units.

6. Registration of employees

- (1) An employer, within 30 days after a person becomes an employee of the employer, must apply to the company for the company to register, under the new scheme, the person as an employee.

Penalty: Fine not exceeding 100 penalty units.

- (2) The company is to register, under the new scheme, a person as an employee, whether or not an application has been made under subsection (1), if the company is satisfied that it is appropriate in the circumstances for the person to be so registered.
- (3) If a person is registered under subsection (2), the employer of that person is taken to be a registered employer for the purposes of this Act.
- (4) The company may determine not to register, under the new scheme, a person as an employee if the company is satisfied that it is not appropriate in the circumstances to so register the person.
- (5) An employer must, if a person registered under the new scheme as an employee ceases to be an employee of the employer, notify in writing the company, within 30 days, of that fact.

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Penalty: Fine not exceeding 100 penalty units.

- (6) A person who is registered under the new scheme as an employee is presumed to be employed or engaged in relevant employment.
- (7) The presumption under subsection (6) is rebuttable.

6A. Payments by certain persons

An employer must make to the company any payment that the company determines the employer is required to make under the new scheme, unless a levy is imposed on the employer under section 7.

Penalty: Fine not exceeding 100 penalty units.

6B. Refund of payments

- (1) Despite section 10, the company is to refund to an employer payments, into the current fund or the previous fund, made by the employer, for a specified period, in respect of an employee, if the employer proves, to the satisfaction of the company, that –
 - (a) the employer has provided the employee with –

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- (i) long service leave, or has made a period of long service leave available for the employee to take, in respect of that specified period; or
 - (ii) payment in place of the leave, or period of leave made available, for the employee; and
 - (b) the employee has accepted what has been provided, or made available, by the employer under paragraph (a).
- (2) If a refund of payments is made under subsection (1) –
- (a) the obligations of the company under this Act, in respect of the employee for the period that was the subject of the refunded payments, are discharged; and
 - (b) the period that was the subject of the refunded payments is no longer a period in which that person was employed or engaged in relevant employment for the purposes of this Act.
- (3) Nothing in subsection (1) requires an employer to make a payment under this Act for a period of employment before the commencement of the amending Act,

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if the employer was not obliged to make the payment under this Act before that commencement.

8. Section 7 amended (Levy)

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

9. Section 8 amended (Records, returns and information)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An employer or a person liable to pay a levy under section 7 is to” and substituting “The company may, by notice to a person who is an employer, a person who the company believes on reasonable grounds to be an employer, or a person who is liable to pay a levy under section 7, require the person to”;
- (b) by omitting subsection (2) and substituting the following subsections:
 - (2) To determine if there are reasonable grounds for the company to believe a person is an employer, the company –
 - (a) may, by notice to the person, require the person

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to supply records, returns or information; and

- (b) may presume, if the records, returns or information requested are not supplied within 30 days after the notice is given, that there are reasonable grounds for the belief.

(2A) A person required under subsection (1) to supply records, returns or information to the company must, in respect of a person employed or engaged by that person –

- (a) supply the company with the records, returns or information, or provide access to the records, returns or information, within 30 days of being notified of the requirement; and
- (b) keep, in accordance with the new scheme, for a period of 10 years after the termination of the employment or engagement of the person, a record of the employment or

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engagement of that person.

Penalty: Fine not exceeding 10 penalty units.

(c) by omitting from subsection (3) “subsection (2)” and substituting “subsection (2A)”;

(d) by inserting the following subsection after subsection (3):

(4) A person must not, in making or supplying records, returns or information under this section –

(a) make or supply a record, return or information that the person knows, or reasonably ought to know, is false or misleading in a material particular; or

(b) omit any matter from such a record, return or information if the person knows, or reasonably ought to know, that without that matter the record, return or information is false or misleading.

Penalty: Fine not exceeding 10 penalty units.

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10. Section 9 substituted

Section 9 of the Principal Act is repealed and the following section is substituted:

9. Enforcement

- (1) The company may recover, in any court of competent jurisdiction, the following as a debt owing to the company:
 - (a) any payments required under this Act to be made to the company by an employer;
 - (b) any levy imposed under this Act by the company on a person.
- (2) 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 payment to the company of an amount that, in the opinion of the magistrate, is not more than the amount that would have been payable to the company under this Act by the person that is the subject of the order if that person had complied with this Act since becoming an employer;
 - (c) the supplying of records, returns or information to the company;

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- (d) the keeping of, and access to, records relating to an employee;
- (e) any other matter that he or she considers necessary or desirable for the purposes of this Act.

11. Section 9B amended (Time of occurrence of offence)

Section 9B of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “becomes, or ought reasonably to have become,” and substituting “becomes”;
- (b) by omitting from subsection (2) “becomes, or ought reasonably to have become,” and substituting “becomes”;
- (c) by omitting subsections (3) and (4) and substituting the following subsections:
 - (3) Any proceedings by the company, after the commencement of the amending Act, to recover a payment due to the company must be commenced –
 - (a) within 12 months after the company becomes aware that the payment was due; or
 - (b) if records, returns or information required to

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calculate the payment have been requested by the company within the 12-month period referred to in paragraph (a), within 12 months after the company receives those documents.

(4) A person may rebut when the company became aware of a matter referred to in this section if a person can prove that the company had enough information at its disposal to become aware of the matter earlier.

(5) In this section –

payment means –

- (a) a payment required to be made under this Act; and
- (b) payment of a levy imposed under this Act by the company on a person.

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12. Section 10 amended (Other long service leave provisions)

Section 10 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “other” after “under any”;
- (b) by omitting from subsection (2) “the construction industry” and substituting “relevant employment”.

13. Section 17A inserted

After section 17 of the Principal Act, the following section is inserted in Part 3:

17A. Application of section 21A in certain circumstances

- (1) This section applies to a person (a *transitional employee*) –
 - (a) on whose behalf, immediately before the commencement of the amending Act, payments into the current fund were made; and
 - (b) who, immediately after the commencement of the amending Act, is not an employee under this Act.
- (2) Subsection (1)(a) does not apply in respect of payments that –

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- (a) have been refunded by the company before the commencement of the amending Act; or
 - (b) relate to an entitlement that has been discharged, or that the transitional employee was entitled to discharge, before the commencement of the amending Act.
- (3) Subject to subsections (4) and (6), on and from the day the amending Act commences –
- (a) the transitional employee is to be taken under section 21A(6)(a) to be employed or engaged in relevant employment as if he or she were a relevant person for the purposes of section 21A; and
 - (b) the transitional employee is taken under section 21A(6)(b) to be the employee of the transitional employer for the purposes of this Act; and
 - (c) the transitional employer in respect of the transitional employee is taken under section 21A(6)(c) to be the employer of the transitional employee for the purposes of this Act.

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- (4) Section 21C(1) does not apply to a transitional employee unless he or she has accrued an entitlement to long service since the commencement of the amending Act.
- (5) The transitional employee and the transitional employer may notify the company in writing that both parties agree that section 21A(6) should cease to apply in relation to the transitional employee on a day specified in the notice.
- (6) If a notice is given under subsection (5) in relation to a transitional employee then, on the day specified in the notice as the day on which section 21A(6) is to cease to apply –
 - (a) the transitional employee ceases to be taken under section 21A(6) to be employed or engaged in relevant employment; and
 - (b) the transitional employee ceases to be taken to be the employee of the transitional employer for the purposes of this Act; and
 - (c) the transitional employer in respect of the transitional employee ceases to be taken to be the employer of the transitional employee for the purposes of this Act.

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(7) In this section –

transitional employer, in respect of a transitional employee, means the person who made, in respect of the transitional employee, the payments referred to in subsection (1)(a).

14. Section 21 amended (Reciprocal arrangements)

Section 21 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “construction industry” and substituting “new scheme”;
- (b) by omitting from subsection (2) “the construction industry” first occurring and substituting “relevant employment”;
- (c) by omitting from subsection (2)(b) “the construction industry” and substituting “relevant employment”.

15. Sections 21A, 21B and 21C inserted

After section 21 of the Principal Act, the following sections are inserted in Part 4:

21A. Person taken to be in relevant employment in certain circumstances

- (1) This section applies to a person (the *relevant person*) if the person –

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- (a) has been employed or engaged in relevant employment for a minimum period of 5 years and has been continuously employed or engaged in relevant employment, for at least the last 2 years of that period, by one person (the *relevant employer*); and
 - (b) ceases to be employed or engaged in relevant employment but continues, without interruption, to be employed or engaged by the relevant employer.
- (2) The relevant employer of the relevant person, and the relevant person, may jointly apply to the company for an approval under subsection (5) for the relevant person to be taken, under this section, to be employed or engaged in relevant employment by the relevant employer.
- (3) An application under subsection (2) –
- (a) is to be in an approved form; and
 - (b) is to include an acknowledgement that the relevant person and the relevant employer are aware of –
 - (i) how any entitlement payment will be calculated in accordance with section 21B; and

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- (ii) any charges, costs or payments that may be payable in respect of the person being taken under this section to be employed or engaged in relevant employment; and
- (c) may be made by the relevant employer of the relevant person, and the relevant person, on separate forms; and
- (d) is to be made –
 - (i) no later than 6 months after the relevant person began to be employed or engaged by the relevant employer on ceasing to be employed or engaged in relevant employment; or
 - (ii) if the relevant person ceased to be employed or engaged in relevant employment before the commencement of the amending Act but continued to be employed or engaged by the relevant employer on the commencement of that Act, no later than 6 months after the

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commencement of that
Act; and

- (e) is to be accompanied by the information that the company considers necessary to determine the application.
- (4) However, the company may, in its absolute discretion, accept an application made under subsection (2) that is lodged outside the relevant period specified in subsection (3)(d).
- (5) The company may, in writing –
 - (a) approve an application under subsection (2); or
 - (b) refuse to approve an application under subsection (2).
- (6) Subject to section 21C, if the company approves an application under subsection (2) in relation to a relevant person –
 - (a) the relevant person is taken, on and from the day on which subsection (1)(b) applies to the person, to be employed or engaged in relevant employment; and
 - (b) the relevant person is taken to be, for the purposes of this Act, an employee of the relevant

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employer on and from that day;
and

- (c) the relevant employer is taken to be, for the purposes of this Act, the employer of the relevant person, on and from that day, while he or she is an employee of the employer.
- (7) If the company approves an application under subsection (2) in respect of a relevant person, the relevant employer of the relevant person is not guilty of an offence under section 6A in respect of the period between when the relevant person ceases to be employed or engaged in relevant employment and when the Company approves the application, if the relevant employer has satisfied his or her obligations under this Act in respect of that period within 3 months of the application being approved.
- (8) In this section, a person is continuously employed or engaged if, were that employment or engagement employment for the purposes of the *Long Service Leave Act 1976*, it would be deemed under section 5 of that Act to be continuous.

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21B. Payments relating to relevant employment under section 21A

- (1) An entitlement payment made in relation to a person, in respect of a period in which he or she is taken in accordance with section 21A to be employed or engaged in relevant employment, is to be based on the ordinary pay of the person and calculated in accordance with the Trust Deed.
- (2) The Trust Deed may provide, in relation to a person who is taken in accordance with section 21A to be employed or engaged in relevant employment, for –
 - (a) how the entitlement payment is to be calculated; and
 - (b) any costs, contributions and charges or other payments that may be payable; and
 - (c) how the ordinary pay of the person to whom the entitlement payment relates is to be calculated; and
 - (d) the indexation of the ordinary pay or the entitlement payment; and
 - (e) how the entitlement payment, or ordinary pay, is to be capped under subsection (3) if the payment or ordinary pay is to be so capped.

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- (3) Despite subsection (1), the company may cap, in accordance with the trust deed, any entitlement payment made, or ordinary pay amount used, in relation to a person, in respect of a period in which he or she is taken, in accordance with section 21A, to be employed or engaged in relevant employment.
- (4) The Trust Deed may apply different formulas for calculating the ordinary pay, or an entitlement payment in respect of a person who is taken, in accordance with section 21A, to be employed or engaged in relevant employment according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the Trust Deed.
- (5) The company is to provide details as to how the ordinary pay of a person, or an entitlement payment in respect of a person, who is taken in accordance with section 21A to be employed or engaged in relevant employment, is to be calculated, if requested to do so by the person or his or her employer.
- (6) In this section –

entitlement payment means a payment made out of the current fund or the previous fund by the company to an employee, as a result of the employee wishing to take an entitlement to long service under

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this Act that he or she is eligible
to take.

21C. Termination of deemed relevant employment

- (1) A relevant person to whom section 21A(6) applies, or his or her employer, may notify the company that the person notifying the company no longer intends for section 21A(6) to continue to apply in relation to the relevant person.
- (2) A notice under subsection (1) is to be –
 - (a) in writing; and
 - (b) signed by either the relevant person to whom section 21A(6) applies or his or her employer, or both.
- (3) A notice under subsection (1) may only be given within 3 months of the relevant person to whom section 21A(6) applies accruing his or her entitlement to long service under the new scheme, irrespective of whether that entitlement is the first entitlement accrued under the new scheme or is a subsequent entitlement under that scheme.
- (4) If a notice is given under subsection (1) in relation to a relevant person, the relevant person is no longer taken to be, under section 21A(6), employed or

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engaged in relevant employment, or an employee for the purposes of this Act, and the employer ceases to be taken to be, under section 21A(6), the employer of the relevant person –

- (a) if the notification under subsection (1) is given in anticipation of the accrual of an entitlement to long service – from the day the entitlement to long service is accrued; or
 - (b) if the notification under subsection (1) is given in the 3 months after the relevant person last accrued an entitlement to long service – from the day that entitlement to long service was accrued.
- (5) On a day a person ceases to be employed or engaged by another person –
- (a) the person is no longer taken to be, under section 21A(6), employed or engaged in relevant employment, or an employee for the purposes of this Act on and from that day; and
 - (b) the person who was, immediately before that day, the employer of the person, ceases on and from that day to be taken to be, under

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section 21A(6), the employer of that person.

- (6) Subsections (4) and (5) do not prevent a person to whom either of those sections applies from accruing long service under the new scheme if he or she begins again to be employed or engaged in relevant employment other than in accordance with section 21A(6), whether or not he or she is so engaged by his or her former employer.
- (7) The company is to refund, to the employer of the person who is taken, under section 21A(6), to be employed or engaged in relevant employment, any payment made by the employer in respect of the employment or engagement of the person, if notification has been made under subsection (1) and payments have been made since the person accrued his or her last entitlement.

16. Section 22 amended (Cessation of registration)

Section 22 of the Principal Act is amended by omitting “the construction industry” and substituting “construction work”.

17. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Part 4:

22A. Amendment of Schedule 1

- (1) The Minister, by order, may amend Schedule 1 by doing one or more of the following:
 - (a) inserting an item, or part of an item, in the Schedule;
 - (b) omitting an item, or part of an item, from the Schedule;
 - (c) omitting an item, or part of an item, from the Schedule and substituting another item, or part of an item.
- (2) For the avoidance of doubt, nothing in this Act prevents an item that does not relate to the ANZSIC Code from being inserted, omitted or substituted under this section.
- (3) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under this section as if the order were regulations within the meaning of that Act.
- (4) An order under this section is a statutory rule within the meaning of the *Rules Publication Act 1953*.

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18. Schedule 1 inserted

After section 25 of the Principal Act, the following Schedule is inserted:

SCHEDULE 1 – CONSTRUCTION ACTIVITIES

Section 3

PART 1 – INTERPRETATION

1. Interpretation

(1) In this Schedule –

building includes a proposed building, part of a building, a structure and part of a structure;

n.e.c. means not elsewhere classified in this Schedule.

(2) Unless the contrary intention appears, an expression used in this Schedule has the same meaning as it has in the ANZSIC Code.

(3) A reference in this Schedule to a product of a specific material includes a reference to that product made of any other material.

PART 2 – CONSTRUCTION SECTORS

1. Residential building construction of the following types:

(a) apartment;

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- (b) duplex house;
 - (c) flat;
 - (d) high-rise flat;
 - (e) home unit;
 - (f) housing;
 - (g) prefabricated housing (including buildings prefabricated off-site to a substantially completed state);
 - (h) semi-detached house;
 - (i) shed, garage or carport.
2. Non-residential building construction of the following types:
- (a) commercial building;
 - (b) commercial shed or garage;
 - (c) hotel;
 - (d) industrial building;
 - (e) institutional building;
 - (f) prefabricated non-residential building (including buildings prefabricated off-site to a substantially completed state);
 - (g) religious building.

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3. Road and bridge construction of the following types:

- (a) aerodrome runway;
- (b) asphalt surfacing;
- (c) bridge (including prefabricated components);
- (d) elevated highway;
- (e) overpass;
- (f) parking lot;
- (g) road;
- (h) road sub-base or fill quarrying;
- (i) viaduct construction.

4. Non-building work n.e.c. of the following types:

- (a) boiler (including on-site assembly from prefabricated components);
- (b) bowling green;
- (c) breakwater;
- (d) cable laying;
- (e) canal;
- (f) dam;

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- (g) distribution line (electricity or communication);
- (h) dredging (harbours or rivers);
- (i) electrical machinery, heavy, installation (on-site assembly);
- (j) flood control system;
- (k) furnace (for industrial plants from prefabricated components);
- (l) golf course;
- (m) harbour work (except buildings);
- (n) irrigation system;
- (o) jetty;
- (p) lake;
- (q) mine site n.e.c.;
- (r) oil refinery (except buildings);
- (s) pile driving;
- (t) pipeline;
- (u) railway permanent way;
- (v) river work;
- (w) sewerage or stormwater drain system;
- (x) sewage treatment plant;

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- (y) sports field;
 - (z) swimming pool (below ground, concrete or fibreglass);
 - (za) television or radio transmitting tower;
 - (zb) water tank;
 - (zc) incidental quarrying of earth, soil or filling carried out by contractor at a construction site.
- 5.** Site preparation services of the following types:
- (a) demolition of buildings or other structures;
 - (b) earthmoving;
 - (c) earthmoving plant and equipment hiring with operator;
 - (d) excavation;
 - (e) explosives laying;
 - (f) ground de-watering;
 - (g) land clearing (except rural);
 - (h) levelling (construction sites);
 - (i) mine site preparation;
 - (j) removal of overburden;

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- (k) trench digging.
- 6.** Construction services of the following types:
- (a) footpaths;
 - (b) foundations;
 - (c) kerb and guttering;
 - (d) concrete pumping;
 - (e) construction projects.
- 7.** Bricklaying services of the following types:
- (a) bricklaying;
 - (b) block laying;
 - (c) stonework on construction projects.
- 8.** Roofing services of the following types:
- (a) application of roof coating;
 - (b) roof fixing;
 - (c) roof tiling;
 - (d) roofing materials installation n.e.c.
- 9.** Structural erection services of the following types:

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- (a) silos (including on-site fabrication);
- (b) storage tanks (including on-site fabrication);
- (c) reinforcing erections;
- (d) structural;
- (e) truss or joist;
- (f) welding work on construction projects.

10. Plumbing services of the following types:

- (a) drain;
- (b) gas plumbing;
- (c) guttering;
- (d) hot water system or appliance;
- (e) plumbing (except marine);
- (f) septic tank;
- (g) solar hot water system.

11. Electrical services of the following types:

- (a) electric light or power;
- (b) electric wiring;
- (c) electrical work on construction projects;

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- (d) installation of hot water systems or appliances;
 - (e) installation of television antennae or cables;
 - (f) installation of television satellite dish;
 - (g) maintaining or installing radio or television broadcasting equipment;
 - (h) maintaining or installing telecommunication systems;
 - (i) telecommunication cable or wire installation (except transmission lines).
- 12.** Air conditioning and heating services of the following types (whether household, industrial or electrical):
- (a) air conditioning duct work;
 - (b) air conditioning equipment;
 - (c) coolroom refrigerator;
 - (d) freezer room;
 - (e) heating equipment installation;
 - (f) oil heater;
 - (g) refrigeration equipment;
 - (h) ventilation equipment n.e.c.

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13. Fire and security alarm installation services of the following types:

- (a) closed circuit video surveillance systems;
- (b) fire alarm system;
- (c) fire sprinkler;
- (d) security system;
- (e) smoke detector.

14. Plastering and ceiling services of the following types:

- (a) rendering of buildings;
- (b) decorative plaster fixing;
- (c) fibrous plaster fixing or finishing;
- (d) plasterboard fixing or finishing;
- (e) plaster work on construction projects.

15. Services of the following types:

- (a) carpentry work on construction projects;
- (b) joinery work on construction projects;
- (c) flooring;
- (d) formwork;

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- (e) kitchen cabinets;
- (f) roof truss.

16. Tiling and carpeting services of the following types:

- (a) carpet or carpet tile laying;
- (b) floor sanding;
- (c) floor tiling;
- (d) floor covering laying n.e.c.;
- (e) linoleum or linotile fixing;
- (f) mosaic work on construction projects;
- (g) slate flooring;
- (h) terrazzo laying;
- (i) wall tiling.

17. Painting and decorating services of the following types:

- (a) house painting;
- (b) painting of buildings or other structures;
- (c) spray painting of buildings or other structures;
- (d) wallpapering.

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18. Glazing services of the following types:

- (a) glazing;
- (b) window;
- (c) window curtain wall;
- (d) window insulation fixing;
- (e) window frame.

19. Construction services of the following types:

- (a) paving;
- (b) fence construction (except agricultural);
- (c) garden and streetscape planting;
- (d) garden design implementation;
- (e) garden drainage systems installation in conjunction with constructing landscapes (except agricultural);
- (f) garden sprinkler systems installation in conjunction with constructing landscapes (except irrigation);
- (g) landscape construction;
- (h) lawn construction;
- (i) pond construction;

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- (j) retaining wall construction;
 - (k) rockery work.
- 20.** Hire of construction machinery with operator of the following types:
- (a) construction machinery hiring with operator;
 - (b) crane hiring with operator.
- 21.** Construction services n.e.c. of the following types:
- (a) awnings installation or repair;
 - (b) fixing wall or roof cladding to buildings;
 - (c) blinds installation or repair;
 - (d) flywire screens and shutters;
 - (e) insulation materials;
 - (f) petrol bowsers;
 - (g) abrasive blasting of building exteriors;
 - (h) scaffolding construction;
 - (i) steam-cleaning of building exteriors;
 - (j) waterproofing of building;
 - (k) elevator, escalator or lift.

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22. Other heavy or civil engineering construction of the following types:

- (a) construction or repair of water storage dams, mains or pumping stations;
- (b) installation of radio or television broadcasting equipment or telephone, telegraph or telex equipment;
- (c) construction or repair of distribution line (electricity or communication);
- (d) construction (including on-site assembly), repair or maintenance of complete steel towers, including electricity transmission towers, or power station buildings on-site;
- (e) erection or installation (including on-site fabrication) of structural steel components for overhead cranes, conveyor systems or similar structures;
- (f) construction, repair or maintenance of gas mains.

PART 3 – MANUFACTURING SECTORS

- 1.** Prefabricated building manufacturing when onsite installation is also done, of the following types:

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- (a) building;
 - (b) bus shelters;
 - (c) carport;
 - (d) conservatory;
 - (e) garage;
 - (f) gazebo;
 - (g) kit set home;
 - (h) shed;
 - (i) transportable homes.
- 2.** Structural component manufacturing when onsite installation is also done, of the following types:
- (a) roof truss, manufacturing;
 - (b) door, manufacturing;
 - (c) window unit, manufacturing;
 - (d) window manufacturing;
 - (e) structural fitting, manufacturing;
 - (f) wall frame, manufacturing.
- 3.** Product manufacturing n.e.c. when onsite installation is also done, of the following types:

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- (a) autoclaved aerated concrete product manufacturing;
- (b) blocks, manufacturing;
- (c) box culvert, manufacturing;
- (d) brick, manufacturing;
- (e) building board, manufacturing;
- (f) cistern, manufacturing;
- (g) concrete/styrofoam composite product manufacturing;
- (h) floor or wall tile, manufacturing;
- (i) flower pot, manufacturing;
- (j) on-site fabrication of built-in furniture or other joinery;
- (k) manhole cover, manufacturing;
- (l) meter box, manufacturing;
- (m) monument or grave marker, manufacturing;
- (n) moulding, manufacturing;
- (o) ornamental product manufacturing;
- (p) panel or section, manufacturing;
- (q) post or pole, manufacturing;

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- (r) pipes, manufacturing;
 - (s) railway sleeper, manufacturing;
 - (t) roof tile, manufacturing;
 - (u) roof component, manufacturing;
 - (v) sink or tub, manufacturing;
 - (w) tanks, manufacturing;
 - (x) terrazzo product manufacturing;
 - (y) tile, manufacturing;
 - (z) wall fitting, manufacturing.
4. Prefabricated building manufacturing when onsite installation is also done, of the following types:
- (a) building, prefabricated, manufacturing;
 - (b) transportable home, manufacturing.

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Part 3 – Long Service Leave (State Employees) Act 1994 Amended

**PART 3 – LONG SERVICE LEAVE (STATE
EMPLOYEES) ACT 1994 AMENDED**

19. Principal Act

In this Part, the *Long Service Leave (State Employees) Act 1994** is referred to as the Principal Act.

20. Section 5 substituted

Section 5 of the Principal Act is repealed and the following section is substituted:

5. Application and non-application of Act

- (1) This Act applies to the employment of an employee who would be entitled to long service under the *Construction Industry (Long Service) Act 1997* for that employment if he or she were not employed by a State authority.
- (2) This Act does not apply to the employment of an employee who is –
 - (a) entitled to long service leave under the *Local Government (Building and Miscellaneous Provisions) Act 1993* for that employment; or

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- (b) an employee of a State authority exempted from this Act pursuant to section 6.