



ANNO TRICESIMO
ELIZABETHAE SECUNDAE REGINAE

VICTORIA

Building Industry Long Service Leave (Amendment) Act 1981

No. 9663

An Act to amend the *Building Industry Long Service Leave Act 1975* and for other purposes.

[Assented to 22 December 1981]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act shall be called the *Building Industry Long Service Leave (Amendment) Act 1981*. Short title.

(2) In this Act the *Building Industry Long Service Leave Act 1975* is called the Principal Act.

Principal Act
No. 8693.
Reprinted to
No. 9122.
Subsequently
amended by
Nos. 9355 and
9365.

(3) Except as provided by this Act, this Act shall come into operation on the day on which it receives the Royal Assent.

Commence-
ment.

2. In section 4 (3) of the Principal Act after paragraph (a) there shall be inserted the following paragraph:

“(ab) all penalties recovered under this Act;”.

Amendment of
No. 8693 s. 4.
Penalties to
be paid to
Building
Industry Long
Service Leave
Fund.

3. (1) After

Amendment of
No. 8693.
New ss. 5A,
5B.

Power to
Board to
acquire and
manage land.

3. (1) After section 5 of the Principal Act there shall be inserted the following sections:

“5A. (1) The Board may with the consent of the Minister expend moneys standing to the credit of the Fund—

- (a) in purchasing land in Victoria;
- (b) in constructing buildings and carrying out other improvements on such land;
- (c) in repairing maintaining or altering any building on such land; and
- (d) in paying any outgoings incurred in connexion with the management of such land or buildings including salaries and other expenses in relation to persons employed under section 5B.

(2) Where any interest in land is acquired by the Board, the Board may—

- (a) grant leases (including sub-leases);
- (b) with the approval of the Minister sell the land; and
- (c) grant any easement in favour of any person over the land—

for such consideration and on such terms and conditions as it thinks fit.

(3) The whole or part of—

- (a) any land purchased; or
- (b) any building constructed or altered—

pursuant to sub-section (1) may be used by the Board in connexion with its powers duties and functions under this Act.

Power to
Board to
employ persons
to manage
land and
buildings.

5B. (1) The Board may employ such persons as it considers necessary for or in relation to the management of land or buildings referred to in section 5A and may at any time dismiss any such person.

(2) A person employed by the Board under sub-section (1) shall not be subject to the *Public Service Act 1974*.”.

(2) The Principal Act shall be deemed to have been enacted as amended by this section.

Amendment of
No. 8693 s. 15.
Charge to
be based on
award rate of
pay where
that is more
than ordinary
pay.

4. Section 15 (2) of the Principal Act shall be amended as follows:

- (a) In paragraph (a) before the words “in respect of” there shall be inserted the words “subject to paragraph (ab)”;
- (b) The word “and” after paragraph (a) shall be repealed;
- (c) After

(c) After paragraph (a) there shall be inserted the following:

“(ab) in respect of a worker whose ordinary pay is less than the minimum rate of pay prescribed in the award applicable to the worker or in the case where there is no award applicable to the worker and his ordinary pay is less than the minimum rate of pay prescribed in the award most applicable to the type of building and construction work performed by the worker—the minimum rate of pay prescribed in the award; and”.

5. (1) Section 15 (3) of the Principal Act shall be amended as follows:

Amendment of
No. 8693 s. 15.
Charges to be
paid in first
three months of
continuous
service.

- (a) Paragraph (a) shall be repealed;
- (b) The word “or” at the end of paragraph (a) shall be repealed;
- (c) In paragraph (b) the word “subsequent” shall be repealed;
- (d) In paragraph (b) for the words “the worker” there shall be substituted the words “a worker”.

(2) Section 20 (5) of the Principal Act shall be repealed.

Amendment of
No. 8693 s. 20.
Consequential
amendment.

6. (1) After section 15 (4) of the Principal Act there shall be inserted the following:

Amendment of
No. 8693 s. 15.

“(5) Notwithstanding the preceding provisions of this section, a private employer is not required to pay a long service leave charge in respect of the employment before the month of March, 1982 of a worker engaged in shopfitting work to whose employment the provisions of the Carpenters and Joiners (Long Service Leave) Award 1964 applied before that date.”.

(2) After section 25 (6) of the Principal Act there shall be inserted the following:

Amendment of
No. 8693 s. 25.

“(7) Notwithstanding the preceding provisions of this section, a private employer is not entitled to be reimbursed from the Fund to the extent of any payment in respect of long service leave accrued or deemed to have accrued to a worker engaged in shopfitting work in respect of employment before 1 March 1982 where the provisions of the Carpenters and Joiners (Long Service Leave) Award 1964 applied to that employment before that date.”

(3) This section shall come into operation on 1 March 1982.

7. (1) After

Amendment of
No. 8693 s. 15c

7. (1) After section 15B of the Principal Act there shall be inserted the following:

“15C. (1) Where immediately prior to the commencement of this section—

- (a) the provisions of the Carpenters and Joiners (Long Service Leave) Award 1964 applied to a worker engaged in shopfitting work; and
- (b) the worker had completed more than ten years' service within the meaning of the award and had accrued an entitlement to long service leave on or after 21 December 1973 or was eligible to be granted leave in advance under that award but had not taken the leave to which he was entitled or the advance leave for which he was eligible to be granted—

the employer of the worker shall pay to the Board a lump sum equivalent to that long service leave or leave in advance based on the worker's ordinary rate of pay at the date of commencement of this section.

(2) In this section “ordinary pay” has the same meaning as in section 16.

(3) Any lump sum payable to the Board under this section shall be deemed to be a long service charge for the purposes of Parts II. and VII. of this Act.”

(2) This section shall come into operation on 1 March 1982.

Amendment of
No. 8693.
New s. 15D.
Board may
estimate
charges.

8. Before the heading preceding section 16 of the Principal Act there shall be inserted the following section:

“15D. (1) Where from returns furnished pursuant to this Act or the Regulations or from such other information as satisfies the Board it appears to the Board—

- (a) that any work that has been performed (whether before or after the commencement of this section) is building and construction work;
- (b) that such work was performed by a worker for a private employer or a working sub-contractor or by a registered working sub-contractor not holding a certificate of non-applicability issued under section 13;
- (c) that such employer, working sub-contractor or registered working sub-contractor was liable to pay long service leave charges to the Board in respect of such work; and

(d) that

(d) that those long service leave charges have not been paid—and where there is insufficient information available to the Board to enable the amount of the long service leave charges due in respect of such work to be calculated in accordance with section 15, the Board may estimate and make an assessment of the amount of long service leave charges that in its opinion are due from such employer, working sub-contractor or registered working sub-contractor in respect of such work.

(2) In making an assessment under sub-section (1) the Board may have regard to the prevailing rates of pay for the type of work which is the subject of the assessment at the time such work was performed.

(3) The Board shall cause notice of any assessment made under this section to be served on the employer, working sub-contractor or registered working sub-contractor to whom the assessment relates.

(4) The employer, working sub-contractor or registered working sub-contractor to whom the assessment relates may within a period of 28 days from the date of service of the notice referred to in sub-section (3) lodge with the Board a notice in writing objecting to the assessment and setting out the grounds of such objection.

(5) The Board shall consider every such objection and may affirm or vary the assessment objected to.

(6) After considering any objection or, if there is no objection, after the expiration of 28 days from the date of service of the notice referred to in sub-section (3) the Board shall certify its assessment and the assessment so certified shall be deemed to be the amount of long service leave charges in respect of the relevant work due to and recoverable by the Board in accordance with this Act.”

9. (1) Section 16 of the Principal Act shall be amended as follows:

Rate of
pay as at
date of taking
leave.

(a) In sub-sections (1) and (5) for the expression “(if he dies before the completion of the leave so taken) as at the time of his death” there shall be substituted the expression “as at the time of his death (as the case may be)”;

(b) In paragraph (a) of section 16 (2) for the words “date of the accrual to the worker or (his personal representative) of the entitlement concerned” there shall be substituted the words “date of the taking of the leave by the worker or as at the time of his death (as the case may be)”.

(2) The

(2) The provisions of section 16 (2) of the Principal Act that were in force immediately before 1 March 1980 shall continue to apply to a worker to whom any entitlement to long service leave or pay in lieu of long service leave had accrued on or before 31 January 1977 in all respects as if this Act had not been enacted.

(3) The provisions of this section shall be deemed to have come into operation on 1 March 1980.

Amendment of
No. 8693 s. 19.

10. (1) Section 19 (1) of the Principal Act shall be amended as follows:

Allowable
absences on
account of
work-related
injuries.

(a) Paragraph (e) shall be repealed;

Board to deem
service to
be continuous
in certain
cases.

(b) The word "or" following paragraph (k) shall be repealed;

(c) After paragraph (l) there shall be inserted the following word and paragraph:

“; or

(la) any interval between periods of employment exceeding nine months which the Board has deemed to be continuous service in the industry for the purposes of this section because of the special circumstances of the case.”.

(2) In section 19 (3) of the Principal Act for the expression “paragraph (e) and paragraphs (f) to (l) inclusive” there shall be substituted the expression “paragraphs (f) to (la) inclusive”.

Consequential
Amendment.

(3) In section 20 (3) of the Principal Act for the expression “and (l)” there shall be substituted the expression “(l) and (la)”.

Amendment of
No. 8693
s. 21AA.

11. In section 21AA (2) of the Principal Act for paragraph (a) there shall be substituted the following paragraph:

Refund of
contribution for
working
sub-contractors.

“(a) on the completion by a working sub-contractor of fifteen years continuous service in the industry and thereafter on the completion of each additional five years of continuous service in the industry a refund of his total contributions for the relevant period together with interest thereon at the determined rate;”.

Amendment of
No. 8693 s. 32.
Date of
Effect of
Determination.

12. For section 32 (5) of the Principal Act there shall be substituted the following sub-section:

“(5) The Board shall not specify as the date on which the determination is to take effect a date earlier than the first day upon which it considers that the relevant employer first employed workers to perform building and construction work.”.

13. In

13. In section 38 of the Principal Act for the words "upon application therefor being made by the person entitled thereto within two years after the date of overpayment, refund to that person" there shall be substituted the words "within seven years after the date of overpayment, refund to the person entitled thereto".

Amendment of
No. 8693 s. 38.
Refund of
charges.

14. In section 40 (2) (a) of the Principal Act after the words "magistrates' court" there shall be inserted the words "as a civil debt recoverable summarily".

Amendment of
No. 8693 s. 40.
Charges to be
recovered as
a civil debt by
summary
procedure.

15. Section 52 of the Principal Act shall be amended as follows:

Amendment of
No. 8693 s. 52.

- (a) For the expression "52" there shall be substituted the expression "52. (1)";
- (b) After section 52 there shall be inserted the following sub-section:
 - (2) Regulations prescribing awards for the purpose of the definition of "building and construction work" in section 2 may refer to an award in force or existing at the time the regulation is made or may refer to the award as amended from time to time.

16. Notwithstanding the provisions of the Principal Act the following provisions shall apply to a Loy Yang worker:

Loy Yang
worker.

- (a) For the purposes of this section "Loy Yang worker" means a worker who—
 - (i) is a beneficiary under the Deed of Settlement made on 4 February 1981 relating to the Loy Yang Hardship Payments Trust Fund; and
 - (ii) was at the date of termination of his employment referred to in paragraph (b) a registered worker or entitled to be a registered worker under the Principal Act;
- (b) Where a Loy Yang worker's service in the industry was interrupted by a termination of his employment which qualified him as a beneficiary under the Deed of Settlement referred to in paragraph (a) the Building Industry Long Service Leave Board may deem any period between the date of the Loy Yang worker's termination of employment and the 17 November 1980 (other than a period during which the Loy Yang worker was employed in the building and construction industry) to be a period of continuous service and to be counted as part of the Loy Yang worker's period of service in the building and construction industry and the provisions of the Principal Act other than Part IV. shall apply accordingly;

(c) The

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- (c) The provisions of the Principal Act shall apply to any period between the date of the Loy Yang worker's termination of employment referred to in paragraph (b) and the 17 November 1980 during which the Loy Yang worker was employed in the building and construction industry.

17. (1) The State Electricity Commission of Victoria shall pay to the Building Industry Long Service Leave Board on or before 1 March 1982 the sum of \$130 000 together with interest thereon at the rate of 14.75 per centum per annum from 31 July 1981 to 15 November 1981 and at the rate of 14 per centum per annum from 16 November 1981 to the date of payment of the principal sum to the Board.

(2) The money paid to the Building Industry Long Service Leave Board under sub-section (1) shall be deemed to be moneys received by the Board in the due course of the administration of the Principal Act.

18. The provisions of sections 16 and 17 of this Act shall be read and construed as one with the provisions of the Principal Act.