



AUSTRALIAN CAPITAL TERRITORY

# **Long Service Leave (Building and Construction Industry) (Amendment) Act 1993**

**No. 39 of 1993**

## **TABLE OF PROVISIONS**

Section	
1.	Short title
2.	Commencement
3.	Principal Act
4.	Interpretation
5.	Construction Industry Long Service Leave Board
6.	Functions of the Board
7.	Heading—Part II, Division 2A
8.	Interpretation
9.	Establishment
10.	Powers of the Board
11.	Application of Fund money
12.	Contracts
13.	Substitution—
	25B. Writing off certain moneys and stores
14.	Application for registration
15.	Application for registration by employee or contractor
16.	Application by employer for registration of employee
17.	Registration
18.	Periodic notices and payments by employers

**TABLE OF PROVISIONS—continued**

Section

- 19. Insertion—
  - 37A. Exemption from payments for working directors
- 20. Employers to keep records
- 21. Particulars in the Employees and Contractors Register
- 22. Service credits
- 23. Removing names from Employees and Contractors Register
- 24. Annual certificates for employees and contractors
- 25. Entitlement to payment in lieu of leave
- 26. Payment for service in reciprocating State or Territory
- 27. Amount of payment
- 28. Review of decisions
- 29. Inspection of Register
- 30. Benefits under Long Service Leave Act
- 31. Further amendments
- 32. Transitional—refund of certain payments in respect of apprentices

**SCHEDULE  
FURTHER AMENDMENTS**



AUSTRALIAN CAPITAL TERRITORY

# **Long Service Leave (Building and Construction Industry (Amendment) Act 1993**

No. 39 of 1993

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## **An Act to amend the *Long Service Leave (Building and Construction Industry) Act 1981***

*[Notified in ACT Gazette S111: 29 June 1993]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **Short title**

1. This Act may be cited as the *Long Service Leave (Building and Construction Industry) (Amendment) Act 1993*.

### **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Principal Act**

3. In this Act, “Principal Act” means the *Long Service Leave (Building and Construction Industry) Act 1981*.<sup>1</sup>

## **Interpretation**

### **4. Section 3 of the Principal Act is amended—**

- (a)** by omitting “Building and” from the definition of “Board” in subsection (1);
- (b)** by omitting all the words after “University” from the definition of “employee” in subsection (1) and substituting “or the University of Canberra, to perform building and construction work, and includes a person who is remunerated at piece-work rates and an apprentice”;
- (c)** by omitting “Canberra College of Advanced Education” from the definition of “employer” in subsection (1) and substituting “University of Canberra”;
- (d)** by inserting in paragraph (a) of the definition of “ordinary remuneration” in subsection (1) “(other than a working director)” after “employee” (first occurring);
- (e)** by omitting paragraph (b) of the definition of “ordinary remuneration” in subsection (1) and substituting the following paragraph:
  - “(b) in relation to a contractor or a working director means—
    - (i) the amount paid or payable to the contractor or working director in respect of the performance by him or her of building and construction work (other than any amount paid or payable to the contractor or working director for reimbursement of any costs incurred, or for any materials provided, by him or her in performing that work); or
    - (ii) the minimum salary or wages payable under an award in respect of the performance by a contractor or working director of that building and construction work;
  - whichever is the greater;”; and
- (f)** by inserting in subsection (1) the following definition:
  - “ ‘working director’ means the director of a company employed by it to perform building and construction work, the only other employees of the company (if any) being directors.”.

### **Construction Industry Long Service Leave Board**

5. Section 4 of the Principal Act is amended by omitting from subsection (1) “Building and”.

### **Functions of the Board**

6. Section 6 of the Principal Act is amended by omitting from paragraph (ca) “Building and”.

### **Heading—Part II, Division 2A**

7. The heading to Division 2A of Part II of the Principal Act is amended by omitting “*Building and*”.

### **Interpretation**

8. Section 19A of the Principal Act is amended by omitting “Building and” from the definition of “Fund”.

### **Establishment**

9. Section 19B of the Principal Act is amended by omitting from subsection (1) “Building and”.

### **Powers of the Board**

10. (1) Section 19C of the Principal Act is amended by omitting from subsection (1) “may” and substituting “shall”.

(2) The amendment effected by subsection (1) shall be taken to have commenced on 1 July 1990.

### **Application of Fund money**

11. Section 19D of the Principal Act is amended by omitting from subsection (1) “may” and substituting “shall”.

### **Contracts**

12. Section 23 of the Principal Act is amended by omitting from subsection (1) “\$100,000” and substituting “\$250,000”.

### **Substitution**

13. Section 25B of the Principal Act is repealed and the following section substituted:

### **Writing off certain moneys and stores**

“25B. The Board may write off—

- (a) irrecoverable amounts of revenue;
- (b) irrecoverable debts and overpayments;

- (c) amounts of revenue, debts or overpayments, the recovery of which would, in the opinion of the Board, be uneconomical; and
- (d) the value of lost, deficient, condemned, unserviceable or obsolete stores.”.

#### **Application for registration**

**14.** Section 27 of the Principal Act is amended by omitting subparagraph (2) (b) (i) and substituting the following subparagraph:

- “(i) the name of the applicant, the address of the principal place of business of the applicant and, if the applicant is a body corporate, the address of its registered office;”.

#### **Application for registration by employee or contractor**

**15.** Section 32 of the Principal Act is amended—

- (a) by inserting in subparagraph (2) (b) (i) “residential” before “address”;
- (b) by adding at the end of subparagraph (2) (b) (i) “and his or her date of birth”;
- (c) by omitting from subparagraph (2) (b) (ii) “an employee” and substituting “a person referred to in paragraph (1) (a)”;
- (d) by omitting subparagraph (2) (b) (iii) and substituting the following subparagraph:
  - “(iii) the name and address of the principal place of business of the employer or, if the employer is a body corporate, the address of its registered office;”;
- (e) by omitting subparagraph (2) (b) (iv);
- (f) by omitting from subparagraph (2) (b) (v) “the period of service with which the applicant is so credited” and substituting “any State or other Territory under a corresponding law of which a period of service has been credited”;
- (g) by omitting subparagraph (2) (b) (vi) and substituting the following subparagraph:
  - “(vi) if the applicant is serving a period of apprenticeship—the date on which the applicant commenced that period of apprenticeship; and”;

- (h) by adding at the end the following subsection:

“(3) In paragraph (1) (a)—

‘employee’ includes a person who was an employee at any time during the period of 12 months before the date of the application.”.

**Application by employer for registration of employee**

16. Section 34 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “and address”;
- (b) by inserting after paragraph (2) (a) the following paragraph:
- “(ab) the address of the principal place of business of the applicant or, if the applicant is a body corporate, the address of its registered office;”; and
- (c) by adding at the end of paragraph (2) (b) “and his or her date of birth”.

**Registration**

17. Section 36 of the Principal Act is amended—

- (a) by adding at the end of paragraph (2) (a) “and his or her date of birth”;
- (b) by omitting from paragraph (2) (b) “and address”;
- (c) by inserting after paragraph (2) (b) the following paragraph:
- “(ba) the address of the principal place of business of the employer (if any) of the person and, if the employer is a body corporate, the address of its registered office;”; and
- (d) by omitting subsection (7) and substituting the following subsections:
- “(7) The registration of a person under subsection (1), or in pursuance of an order of the Board under subsection (4), takes effect—
- (a) if the applicant for registration was an employee on the prescribed day—
- (i) on the day on which he or she commenced building and construction work with the employer with whom he or she was employed on the prescribed day; or
- (ii) on 1 October 1981;
- whichever is the later; or

- (b) if the applicant for registration was not an employee on the prescribed day—on the day on which the applicant commenced building and construction work after the prescribed day.

“(8) In subsection (7)—

‘prescribed day’ means the day that was 12 months before the date on which an applicant for registration lodged his or her application.”.

### **Periodic notices and payments by employers**

**18.** Section 37 of the Principal Act is amended—

- (a) by inserting in paragraph (2) (b) “subject to subsection (10),” before “the name”;
- (b) by inserting in subsection (3) “(other than apprentices)” after “employees”;
- (c) by adding at the end of paragraph (4) (b) “with which that employee is registered”;
- (d) by omitting subsection (6) and substituting the following subsection:

“(6) If an employer fails to pay the prescribed amount in relation to a period—

- (a) within the period specified in subsection (1); or
- (b) within any further period allowed by the Registrar;

there is payable to the Board by the employer, in addition to the prescribed amount—

- (c) interest on the unpaid amount at the rate of 2.5% of that amount; or
- (d) \$50;

for each month or part of a month during which the amount remains unpaid, whichever is the greater.”; and

- (e) by adding at the end the following subsection:

“(10) In paragraph (2) (b)—

‘employee’ does not include a person who, during the period to which the notice relates—

- (a) was not a registered employee; and
- (b) performed building and construction work for less than 5 consecutive days.”.

### **Insertion**

**19.** After section 37 of the Principal Act the following section is inserted:

#### **Exemption from payments for working directors**

“37A. (1) The Board shall—

- (a) on receipt of a notice by a person in accordance with subsection (2); and
- (b) if satisfied that the person to whom the notice relates is a working director;

grant to the employer of the working director an exemption from payment of an amount under paragraph 37 (1) (b) in relation to the performance of building and construction work by that working director.

“(2) A notice under subsection (1) shall be in a form approved by the Registrar.

“(3) An exemption under subsection (1) remains in force until the person to whom the exemption relates—

- (a) ceases to be a working director, otherwise than by reason of his or her ceasing to perform work in the building and construction industry; or
- (b) notifies the Board in writing that he or she no longer wishes the exemption to apply in respect of him or her;

whichever first occurs.

“(4) A working director to whom an exemption relates is to be taken not to be an employee for the purposes of this Act for the period for which the exemption remains in force.”.

#### **Employers to keep records**

**20.** Section 39 of the Principal Act is amended by adding at the end of paragraph (1) (a) “and his or her date of birth”.

#### **Particulars in the Employees and Contractors Register**

**21.** Section 40 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- “(a) if the employee or contractor is serving a period of apprenticeship in the building and construction industry—the date on which the applicant commenced that period of apprenticeship;”.

#### **Service credits**

**22.** Section 42 of the Principal Act is amended—

- (a) by omitting from paragraph (5) (b) “the employee or contractor” and substituting “in the case of an employee—he or she”;
- (b) by omitting from paragraph (5) (b) “and” (last occurring);
- (c) by inserting after paragraph (5) (b) the following paragraph:
  - “(ba) in the case of a contractor—he or she has requested the Board in writing to remove his or her name from the Employees and Contractors Register; and”; and
- (d) by omitting subsection (8).

### **Removing names from Employees and Contractors Register**

**23.** Section 45 of the Principal Act is amended—

- (a) by inserting in paragraph (2) (b) “subject to subsection (2AA),” before “the employee”; and
- (b) by inserting after subsection (2) the following subsections:

“(2AAA) The Board shall not remove the name of a registered employee or registered contractor from the Employees and Contractors Register if the employee or contractor ceases to perform building and construction work and has notified the Board that he or she is otherwise employed or engaged in work in the building and construction industry, until—

- (a) either—
  - (i) the employee or contractor applies to the Board for payment of the total amount for or in lieu of long service leave; or
  - (ii) his or her employer makes an application under subsection 63 (4) for payment of the total amount to which the employer is entitled under subsection 63 (5);
- (b) in the case of a working director or contractor—the working director or contractor requests the Board to remove his or her name from the Register; or
- (c) the period of 10 years commencing on the date on which the employee or contractor ceased to perform building and construction work expires;

whichever first occurs.

“(2AA) A notification under paragraph (2AAA) (b) shall specify—

- (a) the date on which the registered employee or registered contractor became otherwise employed or engaged in work in the building and construction industry; and
- (b) the name and address of the principal place of business of his or her employer (if any), or if the employer is a body corporate, the address of its registered office.

“(2AB) An employee or contractor is entitled to apply for and be paid an amount in lieu of long service leave in respect of any period of service entered in the Register before the date on which his or her registration ceased if the employee or contractor would, but for his or her ceasing to be registered, have been entitled to payment in respect of that period under section 53.”.

#### **Annual certificates for employees and contractors**

**24.** Section 46 of the Principal Act is amended—

- (a) by omitting “his address,” and substituting “his or her address”; and
- (b) by adding at the end the following subsection:

“(2) Subsection (1) does not apply if the Registrar believes on reasonable grounds that the address of a registered employee or registered contractor, as last recorded in the Employees and Contractors Register, is not the present address of the employee or contractor.”.

#### **Entitlement to payment in lieu of leave**

**25.** Section 53 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “(not including the period of any apprenticeship)”;
- (b) by omitting subparagraph (1) (a) (ii) and substituting the following subparagraph:

“(ii) in the case of a person who has performed building and construction work as an employee and as a contractor—

- (A) if the period of work as a contractor is not less than 1 year but his or her period of work as an employee and a contractor is less than 5 years—the period of service as a contractor; or
- (B) if the total period of work as an employee and a contractor is equal to or exceeds 5 years—the period of service as an employee and a contractor;”;

- (c) by omitting paragraph (1) (b) and substituting the following paragraphs:

“(b) in the case of an employee (other than a working director)—

(i) he or she ceased work in the building and construction industry (for a reason other than total incapacity, death or having reached the prescribed retiring age), with the intention of leaving the industry permanently; and

(ii) a period of not less than 20 weeks has expired commencing on the day after the day on which the employee ceased work and in respect of which period the employee has not been credited with any service; and

(ba) in the case of a contractor or working director—he or she has requested the Board in writing to remove his or her name from the Employees and Contractors Register;”;  
and

- (d) by inserting after subsection (1) the following subsection:

“(1A) An employee who, but for this subsection, would not be entitled under subsection (1) to payment in lieu of long service leave because the period referred to in subparagraph (1) (b) (ii) has not expired, is entitled to payment if the Board is satisfied that—

(a) the employee has ceased work in the building and construction industry (for a reason other than total incapacity, death or having reached the prescribed retiring age), with the intention of leaving the industry permanently; and

(b) the employee intends to reside permanently in another country.”.

### **Payment for service in reciprocating State or Territory**

**26.** Section 56A of the Principal Act is amended by omitting paragraph (2) (b) and substituting the following paragraph:

“(b) specify any State or other Territory under a corresponding law of which a period of service has been credited; and”.

### **Amount of payment**

**27.** Section 57 of the Principal Act is amended—

(a) by inserting in subsection (1) “by a person who is or was an employee, in respect of his or her period of service as an employee” after “Board”;

(b) by inserting after subsection (2) the following subsections:

“(2A) Where an application for payment is made to the Board by a person who is or was a registered contractor, in respect of his or her period of service as a registered contractor, the amount of payment to be made to the applicant in respect of service credited to the applicant in the Employees and Contractors Register is the sum of—

(a) amounts paid by the registered contractor to the Board under section 38; and

(b) interest at the determined rate calculated from the date of receipt of each amount paid under section 38.

“(2B) The Board shall determine an interim rate from time to time prior to the determination of the rate under subsection (2A).”;

(c) by omitting from subsection (3) “subsection (1)” and substituting “this section”;

(d) by omitting from subsection (3) the definition of “assessment period” and substituting the following definition:

“ ‘assessment period’ means a period in relation to which a notice specifying the applicant as an employee has been lodged pursuant to section 37;” and

(e) by inserting in subsection (3) the following definitions:

‘determined rate’ means the rate determined by the Board on or after 1 July in each year for the preceding financial year taking into account the expenses incurred in administering the Board, being a rate not less than 75% of the rate of interest expressed as a percentage earned by the Board as calculated by the formula—

$$\frac{2\mathbf{I}}{(\mathbf{FB}+\mathbf{FE})-\mathbf{I}} \times 100$$

where—

**FB** is the amount of the total equity of the Board at the end of the financial year preceding the financial

year in respect of which the rate is being determined;

**FE** is the amount of the total equity of the Board at the end of the financial year in respect of which the rate is being determined;

**I** is the amount of income derived from the investments of the moneys of the Board in the financial year in respect of which the rate is being determined;

‘total equity’, in relation to the Board, means the total assets less the total liabilities of the Board ascertained by reference to the audited balance sheet of the Board in respect of the relevant financial year.”.

### **Review of decisions**

**28.** Section 59 of the Principal Act is amended—

(a) by inserting before paragraph (1) (a) the following paragraph:

“(aa) refusing to register an employer under section 28;”;

(b) by inserting after paragraph (1) (b) the following paragraphs:

“(ba) refusing to allow a further period under paragraph 37 (6) (b);

(bb) that it is not satisfied that a person to whom a notice under subsection 37A (1) relates is a working director;”;

and

(c) by inserting after paragraph (1) (e) the following paragraph:

“(ea) that it is not satisfied that an applicant is entitled to payment as mentioned in subsection 53 (1A);”.

### **Inspection of Register**

**29.** Section 60 of the Principal Act is amended by omitting “employer or a registered employee” and substituting “employer, a registered employee or a person acting on his or her behalf,”.

### **Benefits under Long Service Leave Act**

**30.** Section 63 of the Principal Act is amended by adding at the end of subsection (5) “less any amount outstanding that is payable by the employer to the Board”.

### **Further amendments**

**31.** The Principal Act is amended as set out in the Schedule to this Act.

**Transitional—refund of certain payments in respect of apprentices**

**32. (1)** Where the Board is satisfied that an employer paid an amount pursuant to section 37 of the Principal Act (as in force immediately before the commencement of this section) in relation to a period within the relevant period in respect of an employee who was an apprentice in that period, the Board shall refund to the employer the same proportion of those payments as is equivalent to the proportion of the relevant period for which the employee was an apprentice.

**(2)** In subsection (1)—

“relevant period” means the period commencing on 1 May 1992 and ending on the expiration of the day immediately preceding the commencement of this section.

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## **SCHEDULE**

Section 31

### **FURTHER AMENDMENTS**

**Subsection 3 (1) (definition of “contractor”)—**

Insert “or her” after “his”.

**Subsection 3 (1) (paragraph (a), definition of “ordinary remuneration”)—**

Insert “or her” after “him”.

**Subsection 3 (1) (subparagraph (a) (iii), definition of “ordinary remuneration”)—**

Insert “or her” after “his”.

**Paragraph 3 (5) (b)—**

Insert “or her” after “him”.

**Paragraph 8 (2) (b)—**

Insert “or her” after “his”.

**Subsection 9 (7)—**

(a) Insert “or her” after “his” (wherever occurring).

(b) Insert “or her” after “him”.

**Subsection 10 (1)—**

(a) Insert “or her” after “his”.

(b) Insert “or her” after “him”.

**Subsection 10 (2)—**

(a) Insert “or her” after “his” (first and second occurring).

(b) Omit “his” (last occurring).

**Paragraph 11 (2) (a)—**

Insert “or her” after “his” (wherever occurring).

**Paragraph 11 (2) (b)—**

Omit “one”, substitute “1”.

**Subsection 13 (4)—**

Omit “one”, substitute “1”.

**Subsection 14 (1)—**

Insert “or her” after “his” (wherever occurring).

**SCHEDULE—continued**

**Section 16—**

Insert “or her” after “his”.

**Subsection 18 (1)—**

Insert “or she” after “he”.

**Subsection 19 (1)—**

Insert “or she” after “he”.

**Subsection 29 (1)—**

Insert “or her” after “him”.

**Subparagraph 32 (2) (b) (ii)—**

(a) Insert “or she” after “he” (wherever occurring).

(b) Insert “or her” after “his”.

**Subparagraph 32 (2) (b) (ia)—**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Paragraph 34 (2) (c)—**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Subsection 36 (3)—**

Insert “or she” after “he”.

**Subsection 36 (6)—**

Insert “or her” after “his”.

**Subsection 37 (1)—**

Insert “or she” after “he”.

**Subsection 37 (3)—**

Insert “or her” after “his”.

**Subsection 37 (4)—**

Omit “subsection”, substitute “paragraph”.

**Subsection 38 (1)—**

Omit “he lodges his”, substitute “the registered contractor lodges his or her”.

**Paragraph 38 (2) (b)—**

Insert “or her” after “him”.

**SCHEDULE—continued****Paragraph 38 (2) (c)—**

Insert “or she” after “he”.

**Paragraph 38 (2) (d)—**

Insert “or her” after “him”.

**Subsection 38 (3)—**

Insert “or her” after “him”.

**Subsection 39 (1)—**

Insert “or her” after “him”.

**Paragraph 39 (1) (g)—**

Insert “or she” after “he”.

**Paragraph 40 (f)—**

Insert “or she” after “he”.

**Paragraph 41 (3) (a)—**

Insert “or she” after “he”.

**Paragraph 41 (3) (b)—**

Insert “or her” after “his”.

**Subsection 41 (4)—**

Insert “or her” after “his”.

**Subsections 41 (5) and (6)—**

Insert “or her” after “him”.

**Subsection 42 (1)—**

Omit “one”, substitute “1”.

**Subsection 42 (2)—**

Omit “one” (first occurring), substitute “1”.

**Paragraphs 42 (2) (b) and (c)—**

Omit “one”, substitute “1”.

**Subsections 42 (3A) and (4)—**

Omit “one”, substitute “1”.

**Paragraph 45 (2) (a)—**

Insert “or her” after “his”.

**SCHEDULE—continued**

**Section 47—**

Insert “or her” after “his”.

**Paragraph 51 (1) (b)—**

Omit “one”, substitute “1”.

**Paragraph 51 (2) (b)—**

Insert “or she” after “he”.

**Paragraphs 53 (1) (d) and (2) (d)—**

Omit “one”, substitute “1”.

**Paragraph 54 (d)—**

Omit “one”, substitute “1”.

**Subsection 56 (3)—**

Insert “or herself” after “himself”.

**Subsection 56B (5)—**

Omit “one”, substitute “1”.

**Subsection 63 (1)—**

Omit “law or”, substitute “law of”.

**Subsection 63 (2)—**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Subsection 63 (4)—**

Insert “or her” after “him”.

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**NOTE**

1. Reprinted as at 2 June 1992.

*[Presentation speech made in Assembly on 20 May 1993]*