

AUSTRALIAN CAPITAL TERRITORY

Long Service Leave (Building and Construction Industry) (Amendment) Ordinance (No. 2) 1987

No. 74 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 December 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

R. KELLY
Minister of State for Defence
Science and Personnel

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

Short title

1. This Ordinance may be cited as the *Long Service Leave (Building and Construction Industry) (Amendment) Ordinance (No. 2) 1987*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Long Service Leave (Building and Construction Industry) Ordinance 1981*.²

Interpretation

3. Section 3 of the Principal Ordinance is amended:

(Ord. 51/87)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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- (a) by inserting “(not being an amount in respect of overtime or travelling costs or an additional payment in respect of recreation leave)” after “wages” in subparagraph (a) (iii) of the definition of “ordinary remuneration” in subsection (1);
- (b) by omitting paragraphs (a) and (b) from the definition of “prescribed retiring age” in subsection (1) and substituting the following paragraphs:
 - “(a) in relation to a registered employee or a registered contractor who has been granted a service pension under section 38 of the *Veterans’ Entitlements Act 1986*—the age at which the employee or contractor first receives payment of the service pension; or
 - (b) in any other case—the age of 65 years;”;
- (c) by omitting subsection (1A) and substituting the following subsection:
 - “(1A) For the purposes of this Ordinance, work consisting of:
 - (a) planning, sewing or laying floor coverings; and
 - (b) landscaping;

shall be taken to be work performed in the building and construction industry.”.

4. After section 7 of the Principal Ordinance the following section is inserted:

Delegation

“7A. (1) The Board may, either generally or as otherwise provided in the instrument of delegation, by writing under its common seal, delegate any of its powers to a person who is an officer or employee within the meaning of the *Public Service Act 1922*.

“(2) A delegated power, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Board.

“(3) A delegation under this section does not prevent the exercise of a power by the Board.”.

Inspectors

5. Section 18 of the Principal Ordinance is amended:

- (a) by omitting from subsections (1), (3) and (4) “Secretary” and substituting “Registrar”; and
- (b) by omitting subsection (5).

Powers of inspector

6. Section 19 of the Principal Ordinance is amended:

- (a) by omitting from paragraph (1) (a) “which are required by this Ordinance to be kept by an employer”;
- (b) by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) require any person at the premises to give the inspector:

- (i) any information within the person’s knowledge relating to the rights and duties under this Ordinance of an employer or of any person employed by the employer; and
- (ii) any records, books or documents, or copies of any records, books or documents, being records, books or documents that are in the person’s possession or to which the person has access.”;

- (c) by omitting from subsection (2) “this section” and substituting “subsection (1)”;
- (d) by adding at the end the following subsections:

“(3) An inspector may, by notice in writing served on an employer, require the employer to produce to the Board, within 14 days after the day on which the notice was served:

- (a) any information referred to in subparagraph (1) (b) (i); and
- (b) any records, books, documents or copies referred to in subparagraph (1) (b) (ii);

being information, records books, documents or copies specified in the notice.

“(4) Service of a notice on an employer may be effected:

- (a) if the employer is a body corporate—by leaving it at the employer’s registered office; or

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- (b) if the employer is a natural person:
- (i) by delivering it to the employer personally; or
 - (ii) by leaving it at the last known place of residence or business of the employer with a person who is, or is reasonably believed to be, both over the age of 16 years and residing or employed at that place.

“(5) A person who fails to comply with a requirement made of the person by an inspector pursuant to this section is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months or both.

“(6) In this section, ‘records, books or documents’ means records, books or documents that are required by this Ordinance to be kept by an employer.”.

Contracts

7. Section 23 of the Principal Ordinance is amended by, omitting “\$50,000” and substituting “\$100,000”.

Application for registration by employee or contractor

8. Section 32 of the Principal Ordinance is amended:

- (a) by adding “and” at the end of paragraph (a);
- (b) by omitting from subparagraph (2) (b) (vii) “prescribed; and” and substituting “prescribed.”; and
- (c) by omitting paragraph (2) (c).

Application by employer for registration of employee

9. Section 34 of the Principal Ordinance is amended:

- (a) by omitting paragraph (1) (b) and substituting the following paragraph:
 - “(b) has not applied for registration under section 32 within 3 months after the employee began building and construction work;”;
- (b) by omitting from subsection (1) “or that further period, as the case may be,”.

Repeal

10. Section 35 of the Principal Ordinance is repealed.

Periodic notices and payments by employers

11. Section 37 of the Principal Ordinance is amended:

- (a) by omitting from subsection (1) “Board” (first occurring) and substituting “Registrar”;
- (b) by omitting from subsection (1) “10,000” and substituting “500”; and
- (c) by adding at the end the following subsections:

“(6) Where an employer fails to pay the prescribed amount in relation to a period within the period specified in subsection (1) or within any further time allowed by the Registrar, there is payable to the Board by the employer, in addition to the prescribed amount:

- (a) interest on the unpaid amount at the rate of 2.5 per cent for each month or part of a month during which the amount remains unpaid; or
- (b) if the amount calculated in accordance with paragraph (a) is less than \$50—\$50.

“(7) The Registrar may, on the application of an employer who has contravened subsection (1), or of the Registrar’s own motion, remit part or all of an amount payable by the employer pursuant to subsection (6) if the Registrar is satisfied:

- (a) that the circumstances that gave rise to the contravention were not caused directly or indirectly by the employer; or
- (b) that, because of special circumstances, it would be fair and reasonable to remit part or all of that amount.

“(8) Where a person is convicted of an offence against subsection (1) the court may, in addition to imposing a penalty under that subsection, order the person to pay the Board the prescribed amount in relation to the period in respect of which the offence was committed.

“(9) Where a court has made an order under subsection (8), a certificate signed by the appropriate officer of the court specifying the amount to be paid and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of the amount,

and the certificate is then enforceable in all respects as a final judgement of the court in which it is filed.

Periodic notices and payments by registered contractors

12. Section 38 of the Principal Ordinance is amended by omitting from subsection (1) “Board” (first occurring) and substituting “Registrar”.

Determination and entry of ordinary remuneration by the Board

13. Section 41 of the Principal Ordinance is amended by omitting from subsection (6) “renumeration” and substituting “remuneration”.

Service credits

14. Section 42 of the Principal Ordinance is amended by adding at the end the following subsections:

“(6) An employee shall not be credited with a period of service unless his or her employer has made payment to the Board in accordance with section 37 in respect of the period of service.

“(7) Where:

- (a) a registered employer has ceased to employ any person to perform building and construction work;
- (b) the employer has not made payment to the Board in accordance with section 37 in respect of a period of service by a registered employee who was employed by the employer during the period of service; and
- (c) the Registrar is satisfied that the employee would, but for the employer’s failure to make the payment, be entitled to be credited in the Employees and Contractors Register with the period of service;

the Registrar may credit the employee in that register with that period of service.

“(8) For the purposes of this section, an employee who is registered pursuant to an application under section 32 or 34 lodged more than 3 months after beginning building and construction work shall be deemed to have become a registered employee on the date on which he or she began employment with the employer who was his or her employer when the application was lodged.”.

Removing names from Employees and Contractors Register

15. Section 45 of the Principal Ordinance is amended by omitting from subsection (1) “less that” and substituting “less than”.

16. Section 59 of the Principal Ordinance is repealed and the following sections substituted:

Review of decisions

“59. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Board:

- (a) confirming, under subsection 36 (4), a decision of the Registrar to refuse an application for registration;
- (b) refusing to grant an exemption to an employer under subsection 37 (4);
- (c) making a determination under section 41;
- (d) determining, under subsection 48 (2), an objection made under subsection 48 (1);
- (e) determining, or refusing to determine, a further period as mentioned in paragraph 52 (1) (a);
- (f) refusing to make a payment under subsection 55 (3), 56 (6) or 63 (5);
or
- (g) refusing to authorise a payment to be made under subsection 56B (1).

“(2) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Registrar:

- (a) determining, or refusing to determine, a further period as mentioned in subsection 37 (1);
- (b) refusing to remit, pursuant to subsection 37 (7), part or all of an amount payable by the employer under subsection 37 (6);
- (c) determining, or refusing to determine, a further period as mentioned in subsection 38 (1); or
- (d) refusing to credit an employee with a period of service under subsection 42 (7).

Notification of decisions

“59A. (1) Where the Board or the Registrar makes a decision of a kind referred to in section 59, the Board or the Registrar respectively shall, within 28 days of the date of the decision, cause notice in writing to be given to the person whose interests are affected by the decision.

(2) A notice shall:

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

“(3) The validity of the decision shall not be taken to be affected by a failure to comply with subsection (2).

Evidentiary certificates

“59B. (1) In proceedings for an offence against subsection 37 (1), a certificate signed by the Registrar to the effect:

- (a) that an employer was required to lodge a notice pursuant to paragraph 37 (1) (a) on or before a date ascertained in accordance with subsection 37 (1) and specified in the certificate;
- (b) that an employer was required, pursuant to paragraph 37 (1) (b), to pay the prescribed amount in relation to a period specified in the certificate on or before a date ascertained in accordance with subsection 37 (1) and specified in the certificate;
- (c) that the Registrar did not allow an employer any further period to lodge a notice pursuant to paragraph 37 (1) (a), or to pay an amount pursuant to paragraph 37 (1) (b), as the case may be;
- (d) that the Registrar allowed an employer the further period specified in the certificate to lodge a notice pursuant to paragraph 37 (1) (a), or to pay an amount pursuant to paragraph 37 (1) (b), as the case may be;
- (e) that an employer had or had not lodged a notice pursuant to paragraph 37 (1) (a) on or before a date specified in the certificate; or

- (f) that an employer had or had not paid, pursuant to paragraph 37 (1) (b), an amount in relation to a period specified in the certificate on or before a date specified in the certificate;

is evidence of the matters stated in the certificate.

“(2) In proceedings for an offence against subsection 38 (1), a certificate signed by the Registrar to the effect:

- (a) that a registered contractor was required to lodge a notice pursuant to paragraph 38 (1) (a) on or before a date ascertained in accordance with subsection 38 (1) and specified in the certificate;
- (b) that a registered contractor was required, pursuant to paragraph 38 (1) (b), to pay the prescribed amount in relation to a period specified in the certificate on or before a date ascertained in accordance with subsection 38 (1) and specified in the certificate;
- (c) that the Registrar did not allow a registered contractor any further period to lodge a notice pursuant to paragraph 38 (1) (a), or to pay an amount pursuant to paragraph 38 (1) (b), as the case may be;
- (d) that the Registrar allowed a registered contractor the further period specified in the certificate to lodge a notice pursuant to paragraph 38 (1) (a), or to pay an amount pursuant to paragraph 38 (1) (b), as the case may be;
- (e) that a registered contractor had or had not lodged a notice pursuant to paragraph 38 (1) (a) on or before a date specified in the certificate; or
- (f) that a registered contractor had or had not paid, pursuant to paragraph 38 (1) (b), an amount in relation to a period specified in the certificate on or before a date specified in the certificate;

is evidence of the matters stated in the certificate.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 22 December 1987.
2. No. 23, 1981 as amended by Nos. 12 and 56, 1984; No. 55, 1986; No. 16, 1987.