



AUSTRALIAN CAPITAL TERRITORY

Long Service Leave (Building and Construction Industry) (Amendment) Act 1990

No. 9 of 1990

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

[Notified in ACT Gazette S20: 9 May 1990]

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 1990*.

Commencement

2. (1) Sections 1 to 4 (inclusive), 7 and 13 are to be taken to have commenced on 1 January 1990.

(2) The remaining provisions commence on the day on which this Act is notified in the *Gazette*.

Principal Act

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

Functions of the Board

4. Section 6 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

“(ca) to establish and maintain the Building and Construction Industry Training Fund;”.

Delegation

5. Section 7A of the Principal Act is amended—

- (a) by omitting from subsection (1) “either generally or as otherwise provided in the instrument of delegation,”; and
- (b) by omitting subsections (2) and (3).

Acting members

6. Section 9 of the Principal Act is amended by omitting subsections (4) and (5).

Insertion of Division

7. After section 19 of the Principal Act the following Division is inserted:

“Division 2A—Building and Construction Industry Training Fund

Interpretation

“19A. In this Division—

‘Fund’ means the Building and Construction Industry Training Fund.

Establishment

“19B. (1) The Board shall establish and maintain a fund for the purposes of this Division, known as the Building and Construction Industry Training Fund.

“(2) The Fund is to consist of—

- (a) money that is to be taken to constitute part of the Fund by virtue of subsection 13 (1) of the *Long Service Leave (Building and Construction Industry) (Amendment) Act 1990*;
- (b) amounts transferred to it under subsection 19C (1); and
- (c) income derived from the investment by the Board of Fund money.

Powers of the Board

“19C. (1) At, or as soon as practicable after, the expiration of—

- (a) the period of 3 months commencing on 1 January 1990; and
- (b) each subsequent period of 3 months;

the Board may transfer to the Fund an amount not exceeding 10% of the sum of the amounts paid to the Board under sections 37 and 38 during that period.

“(2) The Board may invest Fund money as it sees fit, subject to section 23.

Application of Fund money

“19D. (1) The Minister may apply money out of the Fund for the purposes of training in the building and construction industry.

“(2) In exercising his or her power under subsection (1), the Minister shall consider any written recommendation of the ACT Regional Building and Construction Industry Training Council Incorporated in relation to the application of money under that subsection.”.

Contracts

8. Section 23 of the Principal Act is amended by adding at the end the following subsection:

“(2) Subsection (1) does not apply in relation to a contract for the investment of money entered into in accordance with section 90 of the *Audit Act 1989*.”.

Triennial investigation by the Actuary

9. Section 24 of the Principal Act is amended—

- (a) by omitting from subsections (1), (2) and (3) “Australian Government”;
- (b) by omitting from subsection (2) “his” (first occurring) and substituting “the”;
- (c) by omitting from subsection (2) “his” (last occurring) and substituting “the Actuary’s”;
- (d) by omitting from subsection (3) “by him”; and
- (e) by adding at the end the following subsections:

“(4) The Treasurer shall, in writing, appoint an actuary for the purposes of this section.

“(5) In this section—

‘the Actuary’ means the actuary appointed under subsection (4).”.

Payment for leave

10. Section 55 of the Principal Act is amended by inserting at the end the following subsection:

“(4) Where—

- (a) an application is lodged not later than 14 days before the applicant becomes entitled to long service leave under this Act; and
- (b) the applicant makes such a request in the application;

the Board shall pay to the applicant any amount payable under subsection (3) not later than 7 days before the applicant becomes entitled to that long service leave.”.

Payment for service in reciprocating State or Territory

11. Section 56A of the Principal Act is amended by inserting at the end the following subsection:

“(5) Where—

- (a) an applicant under subsection (1) is entitled to long service leave under this Act;
- (b) the application under subsection (1) is lodged not later than 28 days before the applicant becomes entitled to that long service leave; and
- (c) the applicant makes such a request in the application;

the Board shall pay to the applicant any amount payable under subsection (4) not later than 7 days before the applicant becomes entitled to that long service leave.”.

Amount of payment

12. Section 57 of the Principal Act is amended—

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

“(b) **R** is the weekly average of the ordinary remuneration received by the applicant, being the greater of the following 2 amounts:

- (i) the amount calculated in accordance with the formula

$$\frac{\mathbf{OR}}{(\mathbf{DS} + \mathbf{DA} + \mathbf{PH})} \times 5, \text{ where—}$$

OR is the aggregate of the ordinary remuneration recorded in the Employees and Contractors Register as received by the applicant during the assessment time;

DS is the number of days’ service during the assessment time credited to the applicant in the Employees and Contractors Register;

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DA is the number of days during the assessment time during which the applicant was absent from employment in the building and construction industry and was paid, or was entitled to be paid, ordinary remuneration, or compensation under the *Workmen's Compensation Act 1951*, by an employer in that industry, being days which are not credited to the applicant as service in the Employees and Contractors Register; and

PH is the number of public holidays and award holidays during the assessment time;

(ii) the amount calculated in accordance with the formula

$$\frac{\mathbf{OR}}{(\mathbf{DS} + \mathbf{DA} + \mathbf{PH})} \times 5, \text{ where—}$$

OR is the aggregate of the ordinary remuneration recorded in the Employees and Contractors Register as received by the applicant during the 12 month period ending at the termination of the last assessment period before the assessment date;

DS is the number of days' service during the 12 month period ending at the termination of the last assessment period before the assessment date, being service which is credited to the applicant in the Employees and Contractors Register;

DA is the number of days during the 12 month period ending at the termination of the last assessment period before the assessment date during which the applicant was absent from employment in the building and construction industry and was paid, or was entitled to be paid, ordinary remuneration, or compensation under the *Workmen's Compensation Act 1951*, by an employer in that industry, being days which are not credited to the applicant as service in the Employees and Contractors Register; and

PH is the number of public holidays and award holidays during the 12 month period ending at the termination of the last assessment period before the assessment date”; and

(b) by adding at the end the following subsection:

“(3) In subsection (1)—

‘assessment date’ in relation to an applicant, means the date on which the relevant application is received by the Board;

‘assessment period’ means—

- (a) in relation to an applicant who is an employee—a period in relation to which a notice specifying the applicant as an employee has been lodged pursuant to section 37; or
- (b) in relation to an applicant who is a contractor—a period in relation to which the applicant has lodged a notice pursuant to section 38;

‘assessment time’ means the 2 assessment periods most recently completed before the assessment date, whether or not those periods are consecutive.”.

Saving

13. (1) Money set aside by the Board between 1 July 1989 and the expiration of 31 December 1989 for the purposes of the establishment of a fund for training in the building and construction industry is to be taken to constitute part of the Building and Construction Industry Training Fund.

(2) The action of the Board referred to in subsection (1) is to be taken to be as valid and effectual for all purposes as if Division 2A of Part II of the Principal Act as amended by this Act had been in force when that action was taken and as if the money had been transferred to the Fund in accordance with that Division.

NOTE

1. Ordinance No. 23, 1981 as amended by Nos. 12 and 56, 1984; No. 55, 1986; Nos. 16 and 74, 1987; Nos. 22, 49, 64 and 74, 1988; Nos. 21 and 38, 1989.

[Presentation speech made in Assembly on 29 March 1990.]

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