



Western Australia

## **Construction Industry Portable Paid Long Service Leave Act 1985**

Compare between:

[01 Dec 2010, 03-e0-01] and [11 Nov 2011, 03-f0-01]



Western Australia

## **Construction Industry Portable Paid Long Service Leave Act 1985**

**An Act to make provision for paid long service leave to employees engaged in the construction industry and for incidental and other purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Construction Industry Portable Paid Long Service Leave Act 1985* <sup>1</sup>.

### **2. Commencement**

The provisions of this Act shall come into operation on such day as is or such days as are, respectively, fixed by proclamation <sup>1</sup>.

### **3. Terms used**

- (1) In this Act unless the contrary intention appears —

***appointed day*** means the day fixed by the Minister under subsection (2);

***award*** means any award or agreement made under the *Industrial Relations Act 1979*, or an award or agreement in force under the *Workplace Relations Act 1996* of the Commonwealth;

***Board*** means the Construction Industry Long Service Leave Payments Board established under section 5;

***books*** includes any register or other record of information and any accounts or financial records (within the meaning of the *Corporations Act 2001* of the Commonwealth), however compiled, recorded or stored and also includes any other document;

***chief executive officer*** means the person, however designated, appointed by the Board under section 13 to carry out the duties and functions of the chief executive officer under this Act;

***construction industry*** means the industry —

- (a) of carrying out on a site the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any of the following —
  - (i) buildings;

- (ii) roads, railways, airfields or other works for the passage of persons, animals or vehicles;
- (iii) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or watercourse for the purposes of navigation;
- (iv) works for the storage or supply of water or for the irrigation of land;
- (v) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (vi) works for the extraction, refining, processing or treatment of materials or for the production or extraction of products and by-products from materials;
- (vii) bridges, viaducts, aqueducts or tunnels;
- (viii) chimney stacks, cooling towers, drilling rigs, gas-holders or silos;
- (ix) pipelines;
- (x) navigational lights, beacons or markers;
- (xi) works for the drainage of land;
- (xii) works for the storage of liquids (other than water) or gases;
- (xiii) works for the generation, supply or transmission of electric power;
- (xiv) works for the transmission of wireless or telegraphic communications;
- (xv) pile driving works;
- (xvi) structures, fixtures or works for the use on any buildings or works of a kind referred to in subparagraphs (i) to (xv);

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- (xvii) works for the preparation of sites for any buildings or works of a kind referred to in subparagraphs (i) to (xvi); and
  - (xviii) fences, other than fences on farms;
  - (b) of carrying out of works on a site of the construction, erection, installation, reconstruction, re-erection, renovation, alteration or demolition of any buildings or works of a kind referred to in paragraph (a) for the fabrication, erection or installation of plant, plant facilities or equipment for those buildings or works;
  - (c) of carrying out of work performed by employees engaged in the work referred to in paragraph (a) or (b) and that is normally carried out on site but which is not necessarily carried out on site,
- but does not include —
- (d) the carrying out of any work on ships;
  - (e) the maintenance of or repairs or minor alterations to lifts or escalators; or
  - (f) the carrying out of maintenance or repairs of a routine or minor nature by employees for an employer who is not substantially engaged in the industry described in this interpretation;

**day of service** means any day on which an employee is entitled to receive ordinary pay and includes any day on which the employee in question is —

- (a) on long service leave under this Act;
- (b) on annual leave in excess of 4 weeks in any period of 12 months;
- (c) on paid sick leave;

**employee** means a person who is employed under contract of service or apprenticeship in a classification of work referred to in a prescribed award relating to the construction industry that is a prescribed classification;

**employees register** means the register of employees established and maintained under Part IV;

**employer** means a natural person or firm or body corporate, as the case may be, who or which engages persons as employees in the construction industry but does not include a Minister, authority or local government prescribed under subsection (4)(c);

**employers register** means the register of employers established and maintained under Part IV;

**member** means a member of the Board and includes the chairman;

**ordinary pay**, of a person, means the rate of pay (disregarding any leave loading) to which the person is entitled for leave (other than long service leave) to which the person is entitled;

**union** means an organization of workers or employees registered under Schedule 1 of the *Workplace Relations Act 1996* of the Commonwealth or the *Industrial Relations Act 1979*;

**year of service** means a year of service as determined in accordance with section 21(2).

- (2) The Minister may by Order published in the *Government Gazette* fix a day as the appointed day for the purposes of subsection (1).
- (3) For the purposes of this Act a reference to an employee does not include an apprentice under and for the purposes of any Act of this State or any other State of the Commonwealth relating to apprentices but service as an apprentice shall be included as service for the purposes of this Act.
- (3a) For the purposes of the definition of **ordinary pay** in subsection (1), if the person is not entitled to paid leave (other than long service leave), the ordinary pay of the person is the rate of pay to which the person is entitled for ordinary hours of work.
- (4) The regulations may prescribe —

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- (a) any classification of work referred to in a prescribed award to be a prescribed classification of work for the purposes of the definition of *employee*;
- (b) any award made with respect to employment in the construction industry to be a prescribed award for the purposes of this Act;
- (c) a Minister in the Government, an authority, whether a body corporate or not, constituted by a written law or a local government, not to be an employer, or not to be an employer in respect of prescribed employees of that Minister, authority or local government, for the purposes of the definition of *employer* in subsection (1).

*[Section 3 amended by No. 30 of 1989 s. 4; No. 14 of 1996 s. 4; No. 57 of 1997 s. 38; No. 10 of 2001 s. 44; No. 36 of 2006 s. 44.]*

**4. Crown bound**

This Act binds the Crown in right of the State.



## **Part II — Administration**

### **5. Construction Industry Long Service Leave Payments Board established**

- (1) For the purposes of this Act there shall be established a body corporate by the name of the Construction Industry Long Service Leave Payments Board.
- (2) Under its corporate name the Board —
  - (a) has perpetual succession and a common seal;
  - (b) may sue and be sued in any court;
  - (c) subject to this Act is capable of doing and suffering all that bodies corporate may do and suffer.
- (3) The Board is not an agent of the Crown in right of the State.
- (4) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board the court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that —
  - (a) the seal is the common seal of the Board; and
  - (b) the seal was duly affixed.
- (5) Regulations made under this Act may make provision as to the use of the common seal.

### **6. Membership of Board**

- (1) Subject to this Act the Board shall consist of 7 members appointed by the Minister as follows —
  - (a) one person who shall be chairman;
  - (b) 3 persons appointed from among persons whose names are on a panel of 6 names comprised of 3 names submitted by the body known as the Master Builders' Association of Western Australia and 3 names submitted

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by the body known as the Chamber of Commerce and Industry of Western Australia (Inc); and

- (c) 3 persons appointed from among persons whose names are on a panel of 6 names comprised of 3 names submitted by the body known as the Trades and Labor Council of Western Australia and 3 names submitted by the body known as The Building Trades Association of Unions of Western Australia (Association of Workers).
- (2) Where any of the bodies referred to in subsection (1)(b) or (c) fails to make a nomination within 60 days after being requested in writing by the Minister to do so the Minister may appoint any person considered suitable and any person so appointed shall be deemed to have been nominated pursuant to subsection (1)(b) or (c), as the case may be.
- (3) A member shall hold office for such period not exceeding 5 years as is specified in his instrument of appointment.
- (4) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

*[Section 6 amended by No. 8 of 2009 s. 39.]*

**7. Acting members**

- (1) Where —
  - (a) a member other than the chairman is absent or temporarily incapable of fulfilling the duties of a member; or
  - (b) the office of a member other than the chairman is vacant and has not been filled in accordance with this Act,

the Minister may on the nomination of the relevant body referred in section 6(1)(b) or (c) appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires, and a person so appointed has, while the appointment subsists, all the duties,

powers and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

- (2) A nomination for the purposes of subsection (1) may be made from time to time and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination.
- (3) The Minister, in the absence or incapacity of the chairman or if that office is vacant, may appoint a person to act as chairman and that person, while the appointment subsists, has all the functions, powers and duties of the chairman.
- (4) The appointment of a person as an acting member or as acting chairman may be terminated at any time by the Minister.
- (5) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen or had ceased, that there is a defect or irregularity in or in connection with his appointment or that the appointment had ceased to have effect.

**8. Vacation of office**

- (1) The Minister may terminate the appointment of a member for inability, inefficiency or misbehaviour.
- (2) The office of a member becomes vacant if —
  - (a) he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (b) his appointment is terminated by the Minister under subsection (1); or
  - (c) he is absent, except on leave duly granted by the Minister, from 3 consecutive meetings of the Board of which he has had notice; or

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- (d) he resigns his office by written notice addressed to the Minister; or
  - (e) being a member appointed under section 6(1)(b) or (c) the body by whom he was nominated withdraws its nomination; or
  - (f) he dies.
- (3) Subject to this Act where a vacancy occurs in the office of a member otherwise than by effluxion of time the Minister may appoint an eligible person to fill the vacancy but any person so appointed holds office only for the balance of the term of his predecessor.

*[Section 8 amended by No. 18 of 2009 s. 21.]*

**9. Fees and allowances**

- (1) A member is entitled to such fees and allowances as the Minister determines from time to time after consultation with the Public Sector Commissioner.
- (2) Acceptance of, or acting in the office of a member shall not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994* or any other Act applying to persons as officers of the Public Service or employees of a State instrumentality applicable to that member or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of, or acting in, that office.

*[Section 9 amended by No. 32 of 1994 s. 3(2); No. 39 of 2010 s. 89.]*

**10. Meetings of Board and disclosure of interest**

- (1) The chairman may, and shall whenever so requested by the Minister or by not less than 2 members, convene a meeting of the Board to be held at a time and place determined by the chairman.

- (2) The chairman shall preside at any meeting of the Board at which he is present.
- (3) If the chairman is not present at a meeting of the Board the person appointed to act in place of the chairman shall preside at that meeting.
- (4) At a meeting of the Board —
  - (a) 5 members constitute a quorum;
  - (b) where any question requiring a vote arises the question shall be decided by a majority of the votes of the members present.
- (5) Subject to the presence of a quorum the Board may act notwithstanding any vacancy in its membership.
- (6) A member who has a pecuniary interest, whether direct or indirect, in any matter to be considered by the Board shall declare the nature of that interest at every meeting at which the matter is considered and shall not take part in deliberations or vote on the matter.
- (7) Notwithstanding anything in subsection (6) a member who is a registered employee and a member who is an employee or director or shareholder in any body corporate that is an employer is not required to disclose that fact and is not disqualified from taking part in or voting on any matter by reason only of that fact.
- (8) To the extent that they are not prescribed the Board may determine its own procedures.
- (9) The Board shall cause minutes to be kept of the proceedings at all meetings of the Board.

**11. Minister may require Board to give information**

The Minister may by notice in writing require the Board to supply to the Minister such information relating to any matter under this Act as is specified in the notice.

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**12. Indemnity**

A person who is or was a member or acting member is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power, or the carrying out of any duty or function as a member.

**13. Staff**

The Board may appoint or engage a chief executive officer, howsoever designated, and such other persons as are necessary for the purposes of the administration of this Act.

**14. Functions of Board**

- (1) Subject to this Act, the Board shall carry out the administration of this Act.
- (2) The functions of the Board are —
  - (a) to maintain the register of employers and register of employees;
  - (b) to administer the scheme of payment to employees during long service leave established under this Act;
  - (c) to advise the Minister on the administration of this Act;
  - (d) to carry out such other functions as are conferred on the Board under this Act.
- (3) The Board has power to do all such things as are necessary or convenient for or in connection with the performance of its functions.

**15. Funds of Board**

- (1) The funds of the Board shall consist of —
  - (a) such moneys as are paid to the Board under section 34;
  - (b) proceeds from investments made by the Board under subsection (3);

- (c) such moneys as the Board may borrow under this Act;
  - (d) any other amounts received by the Board under this Act.
- (2) Subject to this Act, the funds of the Board shall be applied —
  - (a) to make long service leave payments to employees in accordance with this Act;
  - (b) for the repayment of moneys borrowed under section 16;
  - (c) in payment of remuneration and allowances to members;
  - (d) in payment of salaries and wages of persons employed or engaged by the Board; and
  - (e) for the purpose of the administration of this Act.
- (3) The Board may invest any moneys standing to the credit of the Board and any moneys borrowed under section 16 until those moneys are required for the performance of the functions and discharge of the duties or obligations of the Board as trust funds may be invested under Part III of the *Trustees Act 1962* and any interest derived from such investment shall be paid to the credit of the Board.

*[Section 15 amended by No. 30 of 1989 s. 5; No. 1 of 1997 s. 18.]*

**16. Power to borrow and guarantee**

- (1) Subject to subsection (2) the Board may borrow money by way of loans or overdraft on such terms and conditions as the Board thinks fit but any loan in respect of which a guarantee is to be given by the Treasurer of the State under this section is subject to the prior consent in writing of the Treasurer and to such terms and conditions as the Treasurer specifies.
- (2) The Treasurer of the State may from time to time, upon and subject to such terms and conditions as he thinks fit, and without further authority than this section, guarantee on behalf of the Crown in right of the State, the due redemption of any principal

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moneys borrowed by the Board pursuant to subsection (1) and the due payment of all interest thereon.

- (3) The Treasurer of the State shall cause any money required to fulfil any guarantee given by him under this section, to be charged to the Consolidated Account, which account is hereby to the necessary extent appropriated accordingly, and shall cause any sums received or recovered by the Treasurer from the Board or otherwise in respect of a sum so charged by the Treasurer to be credited to the Consolidated Account.

*[Section 16 amended by No. 4 of 1986, s. 4; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]*

**17. Notification of certain contracts to be given to Minister**

- (1) The Board shall notify the Minister of any contracts of a capital nature exceeding the prescribed amount during the period ending on the last day of March, June, September and December of each year.
- (2) The Minister may require the Board to furnish to the Minister such further information in relation to any matter to which subsection (1) applies and the Board shall give effect to any such request.

**18. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* relating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

*[Section 18 inserted by No. 4 of 1986 s. 4; amended by No. 77 of 2006 Sch. 1 cl. 31.]*



**19. Investigations by actuary**

- (1) The Board shall cause investigations to be made as to the state and sufficiency of the funds of the Board as at 30 June in each year.
- (2) The investigations shall be made by an actuary appointed by the Board.
- (3) The actuary making the investigation under this section shall report to the Board the result of the investigation and shall state whether any reduction or increase is necessary in the rates of contributions to be paid to the Board under section 34.
- (4) The remuneration paid to an actuary appointed by the Board in relation to any investigation made under this section shall be an expense incurred by the Board for the purposes of the administration of this Act.

*[20. Deleted by No. 4 of 1986 s. 4.]*

## **Part III — Entitlement to long service leave and pay**

### **21. Entitlement to paid long service leave and pay**

- (1) Notwithstanding any other Act or award but subject to this Act, a person registered as an employee under this Act is entitled to the following long service leave in respect of service in the construction industry —

- (a) 8 <sup>2</sup>/<sub>3</sub> weeks after completing 10 years of service; and
- (b) 4 <sup>1</sup>/<sub>3</sub> weeks after completing 5 years of service subsequently to completing the period of service referred to in paragraph (a),

and is entitled to be paid ordinary pay for such leave in accordance with this Act.

- (2) For the purposes of calculating the entitlement of an employee to long service leave under subsection (1) the following provisions apply —

- (a) 220 days of service as an employee shall be regarded as 1 year of service;
- (b) no more than 220 days of service shall be credited to an employee in a period of 12 months whether or not he has been employed as an employee during that period;
- (c) service in the construction industry is not required to be continuous and shall be included whether or not service is with more than one employer;
- (d) service with the same employer need not be continuous service as an employee but in that event only days of service as an employee shall be included;
- (e) a period of service in respect of which an employee has received a lump sum payment under section 22(1) shall not be counted as service.

- (3) In subsection (1) —

**ordinary pay** means the average ordinary pay of the person over the period in which the person completed his or her most recent 220 days of service in the construction industry.

*[Section 21 amended by No. 30 of 1989 s. 6; No. 36 of 2006 s. 45.]*

**22. Lump sum payments**

- (1) Subject to section 24A(1), an employee who for any reason terminates his employment in the construction industry, or whose employment in the construction industry is terminated for any reason other than serious misconduct by him, is entitled to a lump sum payment in respect of service in the construction industry as follows —
- (a) where he has completed at least 7 years of service but less than 10 years of service, a sum which bears the same proportion to the money value of the entitlement referred to in section 21(1)(a) as the period of service completed bears to 10 years; or
  - (b) where he has completed at least 10 years of service —
    - (i) where an accrued entitlement under section 21(1) has not been taken, the money value of that entitlement; and
    - (ii) for each year of service after the completion of 10 years of service which is not part of the period of an accrued entitlement under section 21(1), one-tenth of the money value of the entitlement referred to in section 21(1)(a).
- (2) Where an employee dies after completing at least 7 years of service in the construction industry, in respect of such period of the employee's service as had not formed part of the period of an entitlement under section 21(1) taken by him or been the subject of advance long service leave taken under section 24A(1), a lump sum payment consisting of —

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- (a) in respect of an accrued entitlement under section 21(1), the money value of that entitlement; and
- (b) in respect of a period of service which was not part of the period of an accrued entitlement under section 21(1), a sum which bears the same proportion to the money value of the entitlement referred to in section 21(1)(a) as that period of service bears to 10 years,

shall be paid, as the Board thinks fit, to —

- (c) any person who was the spouse or de facto partner of the employee immediately before the death of the employee and who, in the opinion of the Board, was financially dependent on that employee at that time; or
- (d) the estate of the deceased employee.

*[Section 22 inserted by No. 30 of 1989 s. 7; amended by No. 28 of 2003 s. 23; No. 36 of 2006 s. 46.]*

**23. Cessation of continuous service entitlement**

- (1) Where a person has been engaged as an employee —
  - (a) for any number of days that does not exceed 1 100 days and has not been so engaged within the period of 2 years commencing from the last of such days; or
  - (b) for any number of days exceeding 1 100 days and has not been so engaged within the period of 4 years commencing from the last of such days,

the Board shall cause the name of that person to be removed from the register of employees and where the name of an employee is so removed the entitlement of that person to long service leave in respect of those days is extinguished.

- (2) Nothing in this section prevents an employee from becoming entitled to long service leave under this Act by virtue of any subsequent service as an employee.

**24. Taking of leave**

- (1) Subject to this Act, an employee in respect of whom an entitlement to long service leave has accrued under this Act is entitled to be granted and to take that long service leave as soon as is reasonably practicable having regard to the circumstances of the establishment of the employer by whom he is employed at that time.
- (2) The Board shall within 2 months before the day that an employee becomes entitled to take long service leave notify the employee and his employer of that fact.
- (3) An employee shall take long service leave in one continuous period unless the employer consents to the leave being taken in more than one period but in any event —
  - (a) the leave shall not be taken in more than 3 periods;
  - (b) a period of leave shall be not less than one week.
- (4) Where an employer and employee do not agree as to the time or times at which an employee may proceed on leave the employer or employee may apply to the Board and the Board may determine the application.

*[Section 24 amended by No. 30 of 1989 s. 8.]*

**24A. Proportional leave in advance after 7 years service**

- (1) An employee with at least 7 years of service in the construction industry may, with the consent of his employer, take advance long service leave for not longer than the period which bears the same proportion to the length of his service then completed as the period of  $8\frac{2}{3}$  weeks bears to 10 years, and where leave is so taken, the employee is not entitled to further long service leave or a payment under section 22(1) for the period of service in respect of which advance long service leave has been taken.
- (2) Sections 24(3), 27, 28 and 29 apply to and in relation to the taking of advance long service leave by an employee under subsection (1) in the same way as they apply to and in relation

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to the taking of long service leave by an employee under an entitlement conferred by section 21(1).

*[Section 24A inserted by No. 30 of 1989 s. 9; amended by No. 36 of 2006 s. 47.]*

**25. Payment when due**

The amount of money payable in respect of an entitlement under this Act becomes due when the Board is satisfied of that entitlement and shall be payable to the employee only in respect of the leave taken but, the Board may, with the agreement of the person who is entitled to the payment, postpone the payment for such period as is specified in the agreement.

*[26. Deleted by No. 30 of 1989 s. 10.]*

*[27. Deleted by No. 36 of 2006 s. 48.]*

**28. Prohibition on other employment**

- (1) Subject to subsection (3), a person who is receiving or who has received any long service leave payment under this Act shall not during the period that he has been given as long service leave engage in any employment for hire or reward.

Penalty: For a first offence \$200, for a second or subsequent offence \$400.

- (2) Subject to subsection (3) a person shall not engage or employ for hire or reward any person registered as an employee during the long service leave period of that second-mentioned person.

Penalty: For a first offence \$200, for a second or subsequent offence \$400.

- (3) The Board may by notice in writing permit an employee who is on long service leave to be employed in the construction industry during that period subject to such terms and conditions (including the taking of the remainder of that leave) as the Board specifies in the notice.

- (4) An employer who employs an employee who is permitted to be employed under subsection (3) is liable to pay the contributions under this Act in respect of any such employee.
- (5) Where an employee is employed by a person so as to contravene subsection (1) that contravention shall not be pleaded in bar to any claim for the recovery of any wages or other remuneration due by that person to the employee.

**29. Public holidays**

If —

- (a) a public holiday occurs during a period of long service leave taken by an employee under section 21 or 24A; and
- (b) the employee is otherwise entitled to that holiday under the employee's conditions of employment,

the period of long service leave is increased by one day for each such public holiday.

*[Section 29 inserted by No. 36 of 2006 s. 49.]*

**29A. Reciprocal arrangements**

- (1) In this section —

**construction industry** has the same meaning as in section 3(1);

**corresponding law** means a law of another State or of a Territory which —

- (a) provides for long service leave payments for persons employed in the construction industry; and
- (b) is prescribed as a corresponding law for the purposes of this section;

**corresponding public employer in this State** means —

- (a) a Minister in the Government;
- (b) an authority, whether a body corporate or not, constituted by a written law; or

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- (c) a local government  
who or which is prescribed under section 3(4)(c).
- (2) The Minister may, on the recommendation of the Board, make a reciprocal arrangement with —
  - (a) the Minister of State of another State or of a Territory responsible for the administration of a corresponding law; or
  - (b) a corresponding public employer in this State;being a reciprocal arrangement relating to —
  - (c) long service leave entitlements for persons employed in the construction industry transferring —
    - (i) to or from this State from or to another State or a Territory; or
    - (ii) to or from an employer from or to a corresponding public employer in this State;
  - (d) the making by the Board of contributions to an authority equivalent to the Board established by a corresponding law or to a corresponding public employer in this State and the receipt by the Board of contributions from that authority or that corresponding public employer in this State;
  - (e) the exchange of information concerning service credits and entitlements to long service leave payments; and
  - (f) incidental or related matters.
- (3) Where a reciprocal arrangement is made —
  - (a) the Board is liable to make and is entitled to receive contributions in accordance with the reciprocal arrangement and is in all other respects bound by the terms of the reciprocal arrangement; and
  - (b) this Act shall be construed as applying with any modifications which are necessary to give effect to the terms of the reciprocal arrangement.



*[Section 29A inserted by No. 30 of 1989 s. 11; amended by  
No. 14 of 1996 s. 4.]*

## **Part IV — Registration**

### **30.        Registration of employers and employees**

- (1) Every natural person, firm or body corporate that is an employer in the construction industry (whether or not he or it carries on any other business) shall register as an employer under this Act.
- (2) On and after the appointed day a natural person, firm or body corporate who or which fails to comply with subsection (1) commits an offence.  
Penalty: \$500.
- (3) A natural person, firm or body corporate who or which desires to register as an employer under this Act shall apply in writing to the Board for registration in the form of a form approved by the Board.
- (4) A person who desires to register as an employee under this Act shall apply in writing to the Board for registration in the form of a form approved by the Board.
- (5) An application under this section by an employer shall contain every name and address under which the employer is engaged in the construction industry.
- (6) Where an employer ceases to operate under any name or at any address notified in an application the employer shall notify the Board or cause the Board to be notified of that fact.
- (7) A person who fails to comply with subsection (5) or (6) commits an offence.  
Penalty: \$500.
- (8) An application made under subsection (3) or (4) shall contain such information as is required by the form.
- (9) The Board may require an applicant to supply such further information as it specifies in relation to an application under this

section and may require any information to be verified by statutory declaration.

- (10) On receiving an application made under this section the Board may if it is satisfied with the information in the application —
  - (a) register the applicant as an employer or employee as the case requires; and
  - (b) issue to the applicant a certificate of registration.
- (11) Where the Board is not satisfied with any information given in an application the Board may return the application and refuse to register the applicant.
- (12) A registered employer who ceases to employ persons as employees may cancel his registration under this section by giving notice in writing to the Board.

**31. Return to be made by employer**

- (1) A person who is registered under this Act or required to be registered as an employer shall lodge with the Board in respect of each prescribed period —
  - (a) a statement in writing in the form of a form approved by the Board, within 15 days after the end of the prescribed period to which the statement relates, giving such information as is required by the form; and
  - (b) an amount equal to the total amount that is required to be paid under this Act to the Board, in respect of each employee whose name appears on the statement referred to in paragraph (a).
- (2) On and from the appointed day an employer who fails to comply with subsection (1) commits an offence.

Penalty: \$2 500.

**32. Employer to maintain record of employees**

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- (1) An employer shall establish and maintain a record of each employee employed by him showing such information as is required under the regulations.
- (2) An employer shall retain any record established and maintained under subsection (1) for a period of not less than 7 years.
- (3) An employer who fails to comply with subsection (1) or (2) commits an offence.  
Penalty: \$500.

**33. Exempt employer**

Where an employer —

- (a) is engaged in the construction industry in this State;
- (b) is registered as an employer in another State or Territory under a law corresponding to this Act; and
- (c) engages a person as an employee in this State and makes payment in respect of long service payments in respect of that employee in that other State or Territory,

the Board may exempt the employer from the payment of contributions under this Act in respect of any such employee.

**34. Contribution by employer and assessment by Board**

- (1) On and from the appointed day an employer shall pay to the Board in respect of a person employed by him as an employee and in respect of each week or part of a week during which that person is so employed such amounts by way of contributions as are calculated by reference to the ordinary pay payable to that employee as is prescribed.
- (2) Where —
  - (a) an employer fails or neglects to duly furnish a return or information as and when required under this Act or by the Board;

- (b) the Board is not satisfied with a return made or information furnished by an employer;
- (c) the Board has reason to believe or suspect that an employer is liable to pay long service leave contributions under this Act; or
- (d) the Board is of the opinion —
  - (i) that the amount of money paid under subsection (1) in relation to an employee or class of employees is not in accordance with the amount payable under subsection (1); or
  - (ii) that the ordinary pay in relation to which the moneys payable under subsection (1) is not assessed in accordance with the provisions of this Act,

the Board may cause an assessment to be made of the amount of the long service leave contributions which in its judgment ought to be paid by the employer and the employer shall be liable to pay the long service leave contributions and any surcharge as so assessed by the Board.

- (3) Where the Board requires an assessment to be made under subsection (2) and the employer in question is found to be liable to pay any contribution to the Board under this Act the Board may determine that the employer pay to the Board such further amounts by way of surcharge as the Board determines.
- (4) A determination for the purposes of subsection (3) may be expressed as —
  - (a) a fixed amount; or
  - (b) a rate per centum per annum fixed by the Board either specifically or by reference to a rate per centum per annum of the kind specified by the Board.
- (5) The amount of the long service leave contributions specified in the assessment shall be due and payable on the date specified in

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the assessment together with any other amount payable in accordance with this Act.

- (6) The Board shall not make an assessment under subsection (2) unless —
- (a) notice of intention to make the assessment has been served on the employer in question; and
  - (b) the employer in question has been given an opportunity to make submissions in relation thereto orally or in writing or both in person or by his agent.

**35. Register of employers and register of employees**

- (1) For the purposes of this Act, the Board shall establish and maintain a register of employers and a register of employees.
- (2) The registers referred to in subsection (1) shall be established and maintained in accordance with directions given by the Board from time to time.

**36. Employer leaving Western Australia**

Where the chief executive officer has reason to believe that an employer may leave Western Australia before any long service leave contribution becomes payable, the long service leave contribution shall be due and payable in relation to such employer on such date as the chief executive officer fixes and specifies in a notice served on the employer.

**37. Recovery of long service leave contribution**

- (1) Long service leave contributions and any surcharge under this Act shall be deemed when they become due and payable to be a debt due and payable to the Board.
- (2) Any long service leave contribution and surcharge may be sued for and recovered in any court of competent jurisdiction by the chief executive officer suing in the name of the Board.

**38. Liquidator to give notice**

- (1) Every person who is the liquidator of a company that has been an employer registered or required to be registered under this Act shall, within 14 days after he has become liquidator of that company, serve on the chief executive officer notice in writing of his appointment as liquidator.
- (2) The chief executive officer shall as soon as practicable thereafter, notify to the liquidator the amount which appears to the chief executive officer to be sufficient to provide for any long service leave contributions and surcharges which are then or will thereafter become payable by the company.
- (3) The liquidator —
  - (a) shall not without leave of the chief executive officer part with any of the assets of the company until he has been so notified;
  - (b) shall set aside out of the assets available for payment of the long service leave contributions and surcharges to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
  - (c) shall to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay those contributions and surcharges.
- (4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the long service leave contributions and surcharges for which he is liable under subsection (3)), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at any time, available to him for payment, be personally liable to pay the long service leave contribution and surcharge and shall be guilty of an offence.  
Penalty: \$1 000.
- (5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and

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liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the charges due in respect of the company being wound-up, the other person or persons shall be liable to pay that person his equal share of the amount of the long service leave contributions and surcharges so paid.

- (6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the chief executive officer have been properly incurred, by the liquidator, may be paid out of the assets of the company in priority to any long service leave contributions and surcharges payable in respect of the company.
- (7) The notice requirements imposed on a liquidator by this section are in addition to the provisions of the *Corporations Act 2001* of the Commonwealth.

*[Section 38 amended by No. 10 of 2001 s. 45.]*

**39. Agent for absentee principal winding up business**

- (1) Where an agent for an absentee principal has been required by the principal to wind up the business of his principal he shall, before taking any steps or further steps to wind up the business, serve on the Board notice of his intention so to do, and shall set aside such sum out of the assets of the principal as is specified in a notice served on him by the Board as being necessary to provide for any long service leave contributions and surcharges that are or may become payable.
- (2) An agent who fails to give notice to the Board or who fails to provide for payment of the long service leave contributions and surcharges as required by this section shall be personally liable for any long service leave contributions and surcharges that become payable in respect of the business of the principal.

**40. Where long service leave charges are not paid during lifetime**



- (1) The provisions of this section apply where, whether intentionally or not, a person escapes full payment of long service leave contributions and surcharges in his lifetime by reason of his not having duly made any, or full, complete and accurate returns.
- (2) The Board has the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as it would have had against that person if he were alive.
- (3) The trustees shall make such returns under this Act as the Board requires.
- (4) The trustees are subject to long service leave contributions and surcharges to the same extent as the deceased person would be subject to long service leave contributions and surcharges if he were still living, but the Board may in any particular case, for reason that, in its discretion, it thinks sufficient, remit any long service leave contributions and surcharges or a part thereof.
- (5) The amount of any long service leave contributions payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

**41. Provisions for payment of long service leave charges by executors or administrators**

- (1) Where, at the time of death of an employer, he has not paid the whole of the long service leave contributions and surcharges payable by him up to the date of his death, the Board shall have the same powers and remedies for the recovery of the long service leave contributions and surcharges from the executors and administrators as it would have had against that employer, if he were alive.
- (2) The executors or administrators shall furnish such of the returns required to be furnished by or under this Act in relation to the

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employment of employees as have not been made by the deceased.

- (3) Where the executors or administrators are unable or fail to furnish a return, the Board may estimate and make an assessment of the amount of long service leave contributions and surcharges due by the deceased employer.
- (4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within 6 months after his death, the Board may cause an assessment to be made of the amount of long service leave contributions due by the deceased employer.
- (5) The Board shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory of the Commonwealth in which the deceased resided.
- (6) Any person claiming an interest in the estate of the deceased employer may, within 60 days after the first publication of notice of the assessment, post to or lodge with the Board an objection in writing against the assessment stating fully and in detail the grounds on which he relies.
- (7) Subject to any amendment of the assessment by the Board or by the Supreme Court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased employer to the Board.
- (8) The Supreme Court may on application by the Board, order that a sufficient part of the property of the deceased employer be sold to pay the assessment and the cost of the application and any property sold pursuant to such an order shall vest in the purchaser.
- (9) Notwithstanding anything contained in subsections (7) and (8), if at any time probate of the will of the deceased employer is granted to a person or letters of administration are taken out by a person, that person may, within 60 days after the date on which the probate was granted or the letters of administration were

taken out, lodge with the Board an objection against the assessment, stating fully and in detail the grounds on which he relies.

**42. Contributions by joint employers**

Where 2 or more persons jointly employ an employee, they shall each be liable for the whole of the long service leave contributions or surcharges payable in respect of that employee but any of them who has paid the long service leave contributions or surcharges may recover from the other or others in any court of competent jurisdiction an equal share of those contributions or surcharges.

**43. Payment of penalties no relief from contributions**

Payment of penalties under this Act shall not relieve any person from liability to any long service leave contributions or surcharges to which he would otherwise be liable.

## **Part V — Miscellaneous**

### **44. Inspectors**

- (1) The Board may engage or appoint such inspectors as are necessary for the purposes of this Act.
- (2) The chief executive officer shall issue to each person engaged or appointed as an inspector under subsection (1) a certificate of appointment in the prescribed form specifying that fact and the general nature of his duties and the holder of the certificate shall produce the certificate whenever requested to do so by any person in relation to whom he is about to exercise any of his powers under this Act.
- (3) Production of a certificate in the prescribed form is conclusive proof in any court of the engagement or appointment of the person to whom that certificate relates and of his authority to exercise the powers conferred on him by this Act in the execution of his duties.

### **45. Power to obtain information and evidence**

- (1) The chief executive officer may, by notice in writing, require any person within such period as is specified in the notice, to furnish him with such information as he requires for the purpose of inquiring into or ascertaining his or any other persons liability or entitlement under any of the provisions of this Act, and may require him to produce all books and other papers whatsoever in his custody or under his control relating thereto.
- (2) A person who fails to comply with a request by the chief executive officer under subsection (1) commits an offence.  
Penalty: \$500.

### **46. Access to books etc.**

The chief executive officer, an inspector or other person authorised by the chief executive officer in writing, whether

generally or in a specific case, shall have full and free access at any reasonable time to all buildings, places, books and other papers for any of the purposes of this Act and for any such purpose may take extracts from or copies of any such books or papers.

**47. Proceedings for offences against this Act**

Proceedings for an offence against this Act shall not be commenced without the consent in writing of the Board.

**48. Institution of proceedings**

- (1) A prosecution for an offence against any provision of this Act may be commenced in the name of the Board by an officer of the Board authorised to commence prosecutions on behalf of the Board.
- (2) An officer of the Board may appear on behalf of the Board in any proceedings for offence against any provision of this Act.

*[Section 48 amended by No. 84 of 2004 s. 80.]*

**49. Evidence**

- (1) For the purposes of any proceedings against a person for the recovery of contributions or surcharges under this Act, a certificate purporting to be signed by the chief executive officer certifying that —
  - (a) the employer named in the certificate was liable to pay the long service leave charges for the period specified in the certificate;
  - (b) an assessment of the long service leave contributions and surcharges was duly made against him;
  - (c) the particulars of the assessment are as stated in the certificate;
  - (d) notice of the assessment was duly served upon the person; or

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- (e) the amount specified in the certificate was at the date of the certificate payable in respect of long service leave entitlements under this Act by the employer,

shall be admissible in evidence in any proceedings against a person under this Act and is, in the absence of evidence to the contrary, conclusive proof of the matters stated in the certificate.

- (2) In any proceedings against a person for failing or neglecting duly to furnish a return, a certificate in writing purporting to be signed by the chief executive officer certifying that the return has not been received from that person shall be admissible in evidence in those proceedings and is, in the absence of evidence to the contrary, conclusive proof of the matter stated in the certificate.
- (3) In any proceedings against a person for failing or neglecting duly to furnish the chief executive officer with any information required by the chief executive officer in pursuance of section 45, a certificate purporting to be signed by the chief executive officer certifying that —
  - (a) the accused was so required to furnish the chief executive officer with the information of the nature specified in the certificate; and
  - (b) the accused failed or neglected duly to furnish the information as and when required by the chief executive officer,

shall be admissible in evidence in those proceedings and is, in the absence of evidence to the contrary, conclusive proof of the matters stated in the certificate.

- (4) In any proceedings against a person under this Act, a certificate purporting to be signed by the chief executive officer certifying that a person was registered under this Act as an employer or employee on a specified date or during a specified period shall be admissible in evidence in those proceedings and is, in the

absence of evidence to the contrary, conclusive proof of the matters stated in the certificate.

*[Section 49 amended by No. 30 of 1989 s. 12; No. 84 of 2004 s. 82.]*

**50. Appeals**

All claims arising out of the —

- (a) refusal of the registration of an employee;
- (b) requirement that an employer register under this Act;
- (c) removal of the name of an employer or employee from the employers register or the employees register respectively;
- (d) assessment of the amount of ordinary pay of an employee under section 34;
- (e) the entitlement of an employee to long service leave;
- (f) the amount of any moneys to be paid in respect of a long service leave entitlement whether *pro rata* or otherwise,

may be made to the Board of Reference constituted under the *Industrial Relations Act 1979* in relation to long service leave and the provisions of section 48(8), (9), (10), (11), and (12) of the *Industrial Relations Act 1979* apply as though the claim were a claim under that section.

**51. Employee accumulating continuous service in more than one capacity**

- (1) Where a person becomes entitled to paid long service leave by virtue of continuous service with an employer and a portion of that service is service in respect of which the employer has made contributions under this Act in respect of that person the employer is entitled to recover from the Board an amount that is proportionate to the ordinary pay that would have been payable to that person under this Act had that person continued to be employed by the employer as an employee at the time that he became entitled to long service leave.

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- (2) In this section —

***ordinary pay*** has the meaning given in section 21(3).

*[Section 51 amended by No. 36 of 2006 s. 50.]*

**52.        Obstructing an inspector or other persons**

A person who —

- (a) obstructs or hinders an inspector appointed under this Act;
- (b) fails to comply with any requirements or directions of an inspector appointed under this Act to furnish any information or any document which he is required to furnish to an inspector;
- (c) conceals any person from, or prevents any person from appearing before, an inspector, or attempts to conceal a person from, or prevent a person from appearing before, an inspector; or
- (d) hinders a person authorised by a union in that behalf from inspecting any records required to be maintained under this Act,

commits an offence.

Penalty: \$500.

**53.        Protection of persons giving information under this Act**

- (1) A person who —

- (a) dismisses a person from or injures him in, his employment or alters his position in his employment to his prejudice or refuses to promote him in his employment;
- (b) refuses to employ another person; or



- (c) directly or indirectly hinders or prevents the employment of another person or the promotion in his employment of a person,

when a reason for doing so is that that person or that other person has given information to an inspector or to the chief executive officer under this Act, commits an offence.

Penalty: \$500.

- (2) The provisions of section 96I of the *Industrial Relations Act 1979* apply to and in relation to a conviction under subsection (1) as though the conviction were a conviction against section 96B of that Act and as though the reference to an industrial magistrate in section 96I of the *Industrial Relations Act 1979* were a reference to a court.

#### **54. Secrecy**

A person who discloses or makes use of any information that has been furnished to him or obtained by him under this Act commits an offence unless that information is disclosed or used —

- (a) with the consent of the person carrying on or operating any business to which that information relates; or
- (b) for the purpose of giving effect to the objects of this Act and in the performance of a duty under this Act.

Penalty: \$500.

#### **55. Effect of other awards or agreements**

This Act has effect notwithstanding any other Act or award to the contrary.

#### **56. Transitional provisions**

The provisions of the Schedule have effect in relation to the several matters specified in it.

*[Section 56 inserted by No. 36 of 2006 s. 51.]*

**s. 57**

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**57. Regulations**

- (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may —
  - (a) prescribe the amount of the long service leave contributions by an employer under this Act;
  - (b) provide for the carrying out or implementation of practices or procedures by an employer that ensure the payment and receipt of long service leave contributions and any surcharge fixed under this Act;
  - (c) regulate the manner of making applications to the Board;
  - (d) regulate the signing of returns, applications, notices, certificates, statements or forms for the purposes of this Act and deeming any return, application, notice, certificate, statement or form signed on behalf of an employer to have been signed by the employer;
  - (e) prescribe fees to be paid in respect of matters arising under or provided for or authorised under this Act and for the waiver or refund in whole or in part of any such fees.

## **Schedule — Transitional provisions**

[s. 56]

*[Heading amended by No. 36 of 2006 s. 52(a) and (b).]*

### **Division 1 — The appointed day**

*[Heading amended by No. 36 of 2006 s. 52(c).]*

#### **1. Employees' service before application for registration**

Notwithstanding anything in section 21, a person who is employed as an employee on the appointed day who applies for registration as an employee at any time on or after the appointed day and is registered as an employee is entitled to have the days of continuous service with that employer preceding the date of his application included as days of service.

#### **2. Employees to pay Board contributions for some employees**

- (1) Notwithstanding anything in section 34 an employer shall pay to the Board in respect of any person referred to in clause 1 whose service with the employer has been continuous for a period of at least 10 years ending on the appointed day such amount as is assessed by the Board as contributions in respect of the paid long service leave contributions in relation to that person.
- (2) Any amount assessed by the Board under subclause (1) shall, if not paid within the time specified by the Board, constitute a debt to the Board and is recoverable by the Board, in any court of competent jurisdiction.

### **Division 2 — The *Labour Relations Legislation Amendment Act 2006***

*[Heading inserted by No. 36 of 2006 s. 52(d).]*

#### **3. Service prior to commencement day**

- (1) If an employee has completed at least 9 but less than 15 years service in the construction industry prior to the commencement day, then, despite section 21(1)(a), the employee cannot take long service leave under section 21(1)(a) until after —

- (a) if the employee has completed at least 14 years service prior to the commencement day — completing 15 years service; or
  - (b) in any other case — 12 months after the commencement day.
- (2) Subsection (1) does not apply if the employee and his or her employer agree to that effect in writing.
- (3) Subclause (1) does not apply in respect of a period of service prior to the commencement day in respect of which the employee has become entitled to take long service leave.
- (4) An employee who becomes entitled to take long service leave under section 21(1)(a) in accordance with subclause (1) or (2) also becomes entitled to take long service leave under section 21(1)(b), in respect of the period of service that exceeds 10 years, *pro rata*.
- (5) Subclause (4) does not apply to an employee if, before being granted the long service leave, the employee completes 15 years service.
- (6) If an employee takes long service leave in accordance with subclause (4), the employee is entitled, after completing 15 years service, to take the remainder of his or her entitlement under section 21(1)(b) not already taken in accordance with subclause (4).
- (7) In this clause —  
**commencement day** means the day on which the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 1 came into operation<sup>1</sup>.

*[Clause 3 inserted by No. 36 of 2006 s. 52(d).]*

### Notes

- <sup>1</sup> This is a compilation of the *Construction Industry Portable Paid Long Service Leave Act 1985* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Construction Industry Portable Paid Long Service Leave Act 1985</i>	72 of 1985	13 Dec 1985	s. 1 and 2: 13 Dec 1985; Act other than s. 1 and 2: 19 Dec 1986 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4860)
<i>Act Amendment (Financial Administration and Audit) Act 1986 s. 4</i>	4 of 1986	27 Jun 1986	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Construction Industry Portable Paid Long Service Leave Amendment Act 1989</i> <sup>3</sup>	30 of 1989	12 Dec 1989	s. 1 and 2: 12 Dec 1989; Act other than s. 1 and 2: 29 Dec 1989 (see s. 2 and <i>Gazette</i> 29 Dec 1989 p. 4665)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 38</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))

**Construction Industry Portable Paid Long Service Leave Act 1985**

Short title	Number and year	Assent	Commencement
<b>Reprint of the <i>Construction Industry Portable Paid Long Service Leave Act 1985</i> as at 5 Mar 1999</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 14	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 7	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 2: The <i>Construction Industry Portable Paid Long Service Leave Act 1985</i> as at 4 Nov 2005</b> (includes amendments listed above)			
<i>Labour Relations Legislation Amendment Act 2006</i> Pt. 7 Div. 1	36 of 2006	4 Jul 2006	1 Oct 2006 (see s. 2(2))
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 31	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 39	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 21	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<b>Reprint 3: The <i>Construction Industry Portable Paid Long Service Leave Act 1985</i> as at 21 May 2010</b> (includes amendments listed above)			
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Standardisation of Formatting Act 2010</i> s. 51 <sup>4</sup>	19 of 2010	28 Jun 2010	To be proclaimed (see s. 2(b))
<sup>2</sup> <del>Footnote no longer applicable.</del>			
<u><i>Industrial Legislation Amendment Act 2011</i> Pt. 2</u> <sup>2</sup>	<u>53 of 2011</u>	<u>11 Nov 2011</u>	<u>To be proclaimed (see s. 2(b))</u>

<sup>2</sup> On the date as at which this compilation was prepared, the *Industrial Legislation Amendment Act 2011* Pt. 2 had not come into operation. It reads as follows:

### Part 2 — Construction Industry Portable Paid Long Service Leave Act 1985 amended

#### 3. Act amended

This Part amends the *Construction Industry Portable Paid Long Service Leave Act 1985*.

#### 4. Section 3A inserted

After section 2 insert:

#### 3A. Application offshore

(1) In this section —

*offshore area* means an area referred to in the *Industrial Relations Act 1979* section 3(3).

(2) Where, under the *Industrial Relations Act 1979* section 3, that Act applies to and in relation to any construction industry carried on wholly or partly in an offshore area, then —

(a) this Act applies to and in relation to employers and employees in that industry in that area; and

(b) subsection (4) of that section applies with all necessary changes for the purposes of this Act.

#### 5. Section 3 amended

(1) In section 3(1) delete the definitions of:

*award*

**employee**

**employer**

(2) In section 3(1) insert in alphabetical order:

**apprentice** means a person who is an apprentice under a training contract that —

(a) provides for training in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification; and

(b) is registered under the *Vocational Education and Training Act 1996* Part 7 Division 2 or an Act of another State or a Territory that corresponds to that Act;

**approved form** means a form approved by the Board for the purposes of the provision in which the term is used;

**employee** means —

(a) a person who is employed under a contract of service in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification; or

(b) an apprentice;

**employer** means —

(a) a natural person, firm or body corporate who or which engages persons as employees in the construction industry; or

(b) a labour hire agency which arranges for a person who is a party to a contract of service with the agency (**person A**) to do work in the construction industry for another person (**person B**), even though person A is working for person B under an arrangement between the agency and person B,

but does not include a Minister, authority or local government prescribed under subsection (4)(c);

**industrial instrument** means —

(a) an award, industrial agreement or order made under the *Industrial Relations Act 1979*; or

(b) an award, determination, enterprise agreement or order made under the *Fair Work Act 2009* (Commonwealth); or



- (c) an award, determination or agreement given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth), irrespective of whether or not the instrument has, since it was made or given continuing effect, ceased to be in force;  
**inspector** means a person engaged or appointed under section 44(1);  
**labour hire agency** means a person or entity that conducts a business of the kind commonly known as a labour hire agency;  
**prescribed** means prescribed by regulations made under this Act;  
**training contract** means a contract that complies with the *Vocational Education and Training Act 1996* section 60E;  
**WAIRC** means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*;
- (3) In section 3(1) in the definition of **construction industry**:  
(a) after paragraph (a)(i) insert:  
(iia) swimming pools and spa pools;  
(b) in paragraph (a)(xvi) delete “for the use on” and insert:  
for use on or for the use of  
(c) in paragraph (f) delete “for an employer who” and insert:  
for an employer, or another person under an arrangement with a labour hire agency, who
- (4) In section 3(1) in the definition of **union** delete “Schedule 1 of the *Workplace Relations Act 1996* of the Commonwealth” and insert:  
the *Fair Work (Registered Organisations) Act 2009* (Commonwealth)
- (5) Delete section 3(3).  
(6) In section 3(4):  
(a) delete “award” (each occurrence) and insert:

industrial instrument

(b) in paragraph (a) delete “definition of *employee*,” and insert:

definitions of *apprentice* and *employee*:

**6. Section 6 amended**

(1) Delete section 6(1)(b) and (c) and insert:

(b) 2 persons appointed from among persons whose names are on a panel of 4 names comprised of —

(i) 2 names submitted by the Master Builders’ Association of Western Australia; and

(ii) 2 names submitted by the Chamber of Commerce and Industry of Western Australia (Inc);

(c) 2 persons appointed from among persons whose names are on a panel of 4 names comprised of —

(i) 2 names submitted by UnionsWA; and

(ii) 2 names submitted by The Building Trades Association of Unions of Western Australia (Association of Workers);

(d) one person who in the Minister’s opinion represents the interests of employers in the construction industry;

(e) one person who in the Minister’s opinion represents the interests of employees in the construction industry.

(2) After section 6(4) insert:

(5) Despite subsection (1) —

(a) subject to section 8, each of the persons holding office as a member of the Board under subsection (1)(b) or (c) immediately before the coming into operation of the *Industrial Legislation Amendment Act 2011* section 6(1) continues to hold office for the remainder of their term of appointment; and

- (b) the Minister is not to appoint a person under subsection (1)(d) until a person referred to in paragraph (a) ceases to hold office as a member under subsection (1)(b); and
- (c) the Minister is not to appoint a person under subsection (1)(e) until a person referred to in paragraph (a) ceases to hold office as a member under subsection (1)(c).
- (6) The regulations may amend subsection (1)(b) or (c) in order to reflect a change in the name of any body referred to in that paragraph.

**7. Section 7 amended**

- (1) Delete section 7(1) and insert:

- (1) If —

- (a) a member appointed under section 6(1)(b) or (c) is absent or temporarily incapable of fulfilling the duties of a member; or
  - (b) the office of a member appointed under section 6(1)(b) or (c) is vacant.

the Minister may, on the nomination of the relevant body referred to in section 6(1)(b) or (c), appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires.

- (2) Delete section 7(3) and insert:

- (3) If —

- (a) the chairman or a member appointed under section 6(1)(d) or (e) is absent or temporarily incapable of fulfilling the duties of a member; or
  - (b) the office of the chairman or a member appointed under section 6(1)(d) or (e) is vacant.

the Minister may appoint a person to act in the place of that member.

- (4A) While acting in the place of a member under this section an acting member has all the functions and entitlements of the member.

**8. Section 8 amended**

(1) Delete section 8(1) and insert:

(1) The Minister may remove a member from office on the grounds of —  
(a) mental or physical inability to carry out the duties of the office in a satisfactory manner; or  
(b) neglect of duty; or  
(c) misconduct; or  
(d) absence, without leave of the Minister or an excuse which is satisfactory to the Minister, from 3 consecutive meetings of the Board of which the member has had notice.

(2) In section 8(2):

(a) in paragraph (b) delete “his appointment is terminated” and insert:

the member is removed from office

(b) delete paragraph (c).

**9. Section 21 amended**

(1) In section 21(1) delete “award” and insert:

any industrial instrument

(2) After section 21(2) insert:

(3A) In addition to the provisions set out in subsection (2), for the purposes of calculating the entitlement of an employee to long service leave under subsection (1), any period of service which occurred —

(a) before a break in service; and

(b) when the person was not registered as an employee under this Act; and

(c) after the coming into operation of the *Industrial Legislation Amendment Act 2011* section 9(2),

is not to be counted as service.

(3) In section 21(3) delete “subsection (1) —” and insert:

this section —

*break in service* means —

- (a) in the case of a person who has been engaged as an employee for any number of days that does not exceed 1 100 days of service — a period within which the person is not so engaged of 2 years or more commencing from the last day of that engagement; or
- (b) in the case of a person who has been engaged as an employee for any number of days exceeding 1 100 days of service — a period within which the person is not so engaged of 4 years or more commencing from the last day of that engagement;

**10. Section 22 amended**

(1) Delete section 22(1)(b)(ii) and insert:

- (ii) for any period of service after the completion of 10 years of service which is not part of the period of an accrued entitlement under section 21(1), a sum which bears the same proportion to the money value of the entitlement referred to in section 21(1)(a) as the period of service bears to 10 years.

(2) After section 22(2) insert:

- (3) When a lump sum payment is made to an employee or in respect of a deceased employee under this section, the Board must remove the name of that person from the register of employees.
- (4) Nothing in subsection (3) prevents a person referred to in subsection (1) from becoming entitled to registration as an employee under this Act by virtue of any subsequent service as an employee.

**11. Section 23 amended**

In section 23(1)(a) and (b) after “1 100 days” insert:

\_\_\_\_\_ of service

**12. Section 24 amended**

\_\_\_\_\_ Delete section 24(2).

**13. Section 28 amended**

(1) In section 28(1) and (2) delete the Penalty.

(2) After section 28(3) insert:

(4A) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of the *Industrial Relations Act 1979* section 83E.

(4B) Subsection (4A) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 13 unless the person was charged with an offence in respect of that contravention.

**14. Section 30 amended**

(1) Delete section 30(1) to (8) and insert:

(1) Every employer must register as an employer under this Act.

(2) An application for registration as an employer must —  
(a) be made in the approved form; and  
(b) contain the information required by the form.

(3) An applicant for registration as an employer must include in the application every name under which, and address from which, the applicant operates as an employer.

(4) An employer must notify the Board if the employer ceases to operate as an employer under any name or from any address included in an application for registration by the employer.

(5) A contravention of subsection (1), (3) or (4) is not an offence but those subsections are civil penalty provisions for the purposes of the *Industrial Relations Act 1979* section 83E.

(6) Subsection (5) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 14 unless the

person was charged with an offence in respect of that contravention.

(2) In section 30(10)(a) delete “employer or employee as the case requires; and” and insert:

employer; and

Note: The heading to amended section 30 is to read:  
Registration of employers

**15. Section 31A inserted**

After section 30 insert:

**31A. Registration of employees**

(1) Subject to subsection (5), the Board must —

- (a) register as an employee under this Act any employee in respect of whom an employer makes a statement under section 31(1); and
- (b) issue to the employee a certificate of registration.

(2) A person who desires to register as an employee under this Act may apply in writing to the Board for registration.

(3) An application made under subsection (2) must —

- (a) be made in the approved form; and
- (b) contain the information required by the form.

(4) The Board may by written notice require —

- (a) an employee in respect of whom an employer makes a statement under section 31(1); or
- (b) an employer who makes a statement in respect of an employee under section 31(1); or
- (c) an applicant for registration under subsection (2).

to supply information the Board requires in relation to the proposed registration of the employee or applicant, and may require the information to be verified by statutory declaration.

(5) If the Board is not satisfied with any information given in an application or under subsection (4), the Board may —

- (a) in the case of an employee to whom subsection (1) applies, refuse to register the employee; or

- (b) in the case of an applicant for registration under subsection (2), return the application and refuse to register the applicant.

**16. Section 31 amended**

- (1) In section 31(1):

- (a) delete “each prescribed period —” and insert:

each prescribed period, within 15 days after the end of that period —

- (b) delete paragraph (a) and insert:

- (a) a statement in the approved form giving the information required by the form; and

- (2) Delete section 31(2) and insert:

- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.

- (3) Subsection (2) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 16 unless the person was charged with an offence in respect of that contravention.

**17. Section 32 amended**

Delete section 32(3) and insert:

- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of the *Industrial Relations Act 1979* section 83E.

- (4) Subsection (3) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 17 unless the person was charged with an offence in respect of that contravention.



**18. Section 34 amended**

After section 34(1) insert:

- (2A) In subsection (1) a reference to a person employed as an employee does not include an apprentice.

**19. Section 35A inserted**

After section 34 insert:

**35A. Penalty for late payment**

- (1) Without limiting section 34, if an employer fails to pay to the Board an amount of contribution within the time required under section 31(1) the employer is liable to pay to the Board, by way of penalty, a surcharge determined by the Board.
- (2) The surcharge becomes due and payable 30 days after the employer is notified in writing by the Board of the determination of the surcharge.

**20. Section 38 amended**

- (1) After section 38(1) insert:

- (2A) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
- (2B) Subsection (2A) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 20 unless the person was charged with an offence in respect of that contravention.

- (2) Delete section 38(3) to (6).

**21. Section 45 amended**

Delete section 45(2) and insert:

- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

(3) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the Industrial Relations Act 1979 section 83E.

(4) Subsection (3) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the Industrial Legislation Amendment Act 2011 section 21 unless the person was charged with an offence in respect of that contravention.

**22. Section 49 amended**

After section 49(1) insert:

(2A) In any proceedings against a person for recovery of a surcharge determined under section 35A, a certificate purporting to be signed by the chief executive officer certifying any of the following —

- (a) that the employer named in the certificate was liable to pay the surcharge;
- (b) that the determination of the surcharge was duly made;
- (c) that the amount of the surcharge is as stated in the certificate.

is admissible in evidence in the proceedings and is, in the absence of evidence to the contrary, conclusive proof of the matters stated in the certificate.

**23. Section 50 replaced**

Delete section 50 and insert:

**50. Review of Board's decision**

(1) In this section —

*reviewable decision* means a decision by the Board —

- (a) to refuse to register an employee; or
- (b) to require an employer to register under this Act; or
- (c) to remove the name of an employer or employee from the employers register or the employees register respectively; or
- (d) as to the assessment of the amount of ordinary pay of an employee under section 34; or

- (e) as to the entitlement of an employee to long service leave; or
    - (f) as to the amount of any moneys to be paid in respect of a long service leave entitlement whether pro rata or otherwise.
  - (2) A person who is aggrieved by a reviewable decision may, in the manner and time prescribed by regulations made under section 51A(3), refer the decision for review to the WAIRC constituted by a single commissioner.
  - (3) On a referral of a decision under subsection (2), the WAIRC is to inquire into the circumstances relevant to the decision and may —
    - (a) affirm the decision; or
    - (b) vary the decision; or
    - (c) set aside the decision and —
      - (i) substitute another decision; or
      - (ii) send the matter back to the Board for reconsideration in accordance with any directions or recommendations that the WAIRC considers appropriate.

**51A. Procedure on review**

- (1) The provisions of the *Industrial Relations Act 1979* sections 22B, 26(1)(a) and (b) and (3), 27, 28, 31(1), (2) and (3), 34(3) and (4), 36 and 49 that apply to and in relation to the exercise of the jurisdiction of the WAIRC constituted by a commissioner apply to and in relation to the exercise of the jurisdiction conferred by section 50 —
  - (a) with any modifications that may be prescribed by the Chief Commissioner under the *Industrial Relations Act 1979* section 113; and
  - (b) with any other modifications that may be necessary or appropriate.
- (2) For the purposes of subsection (1), the *Industrial Relations Act 1979* section 31(1) applies as if paragraph (c) were deleted and the following paragraph were inserted —
  - (c) by a legal practitioner.
- (3) The Chief Commissioner may make regulations under the *Industrial Relations Act 1979* section 113 providing for —

- (a) the manner in which, and time within which, a decision may be referred for review under section 50; and
- (b) the practice and procedure to be followed for the purposes of a review under section 50.

**24. Section 51 amended**

In section 51(1) delete “by virtue of continuous service with an employer” and insert:

under another Act or under an industrial instrument

**25. Section 52 replaced**

Delete section 52 and insert:

**52. Obstructing inspector or other person**

(1) A person must not without reasonable excuse —

- (a) obstruct or hinder an inspector performing a function under this Act; or
- (b) fail to comply with a lawful requirement or direction of an inspector under this Act; or
- (c) conceal any person from, or prevent any person from appearing before, an inspector, or attempt to conceal a person from, or prevent a person from appearing before, an inspector; or
- (d) hinder a person authorised by a union to do so from inspecting any records required to be maintained by an employer under this Act.

(2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.

(3) Subsection (2) extends to a contravention of section 52 as in force immediately before the coming into operation of the *Industrial Legislation Amendment Act 2011* section 25 that occurred within the period of 12 months ending on that coming into operation unless the person was charged with an offence in respect of that contravention.

**26. Section 53 replaced**

Delete section 53 and insert:

**53. Protection of persons giving information under this Act**

(1) A person must not —

- (a) dismiss a person from, or otherwise injure a person in, that person's employment; or
- (b) detrimentally alter a person's employment position; or
- (c) refuse to promote a person; or
- (d) refuse to employ another person; or
- (e) directly or indirectly hinder or prevent the employment of another person or the promotion of a person,

when a reason for doing so is that the person or other person has given information to an inspector or to the chief executive officer under this Act.

(2) A contravention of subsection (1) is not an offence but that subsection —

- (a) is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E; and
- (b) is also enforceable under section 54A.

(3) Subsection (2) extends to a contravention of section 53(1) as in force immediately before the coming into operation of the *Industrial Legislation Amendment Act 2011* section 26 that occurred within the period of 12 months ending on that coming into operation unless the person was charged with an offence in respect of that contravention.

**54A. Remedies for breach of section 53**

(1) If an industrial magistrate's court determines under the *Industrial Relations Act 1979* section 83E that an employer has contravened section 53(1) in relation to a person who is or was an employee of that person, the court may make an order under subsection (2).

(2) The court may order the employer —

- (a) to reinstate the person if he or she was dismissed from employment; or
- (b) subject to subsection (6), to pay to the person compensation for any loss or injury suffered as a result of the contravention.

or to do both of those things.

(3) If an industrial magistrate's court determines under the *Industrial Relations Act 1979* section 83E that a person has contravened section 53(1) in relation to a person other than an employee of the person, the court may, subject to subsection (6), order the person found to have contravened section 53(1) to pay compensation to that other person for any loss or injury suffered as a result of the contravention.

(4) The court may make an order under this section in addition to imposing a penalty under the *Industrial Relations Act 1979* section 83E.

(5) A person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.

(6) The court does not have jurisdiction under this section to order that there be paid —

(a) to an employee who has been dismissed, any amount exceeding 6 months' remuneration of the employee; and

(b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.

(7) For the purposes of subsection (6)(a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.

(8) A person must comply with an order made against the person under this section.

Penalty: a fine of \$5 000 and a daily penalty of \$500.

**27. Section 55 amended**

In section 55 delete "award" and insert:

any industrial instrument

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<sup>3</sup> The *Construction Industry Portable Paid Long Service Leave Amendment Act 1989* s. 13 and 14 read as follows:

**13. Transitional**

(1) In this section —

**Board, day of service, employee** and **employer** have the same meaning as in the principal Act; and

**the appointed day** means the day fixed by the Minister by Order published in the *Government Gazette* as the appointed day for the purposes of this section.

- (2) Notwithstanding anything in the principal Act, the provisions of section 30(2), 31(2) and 34(1) of that Act do not apply until the appointed day to or in relation to a natural person, firm or body corporate who or which becomes an employer by reason of section 4(a) of this Act.
- (3) Notwithstanding anything in section 21 of the principal Act, a person who is employed as an employee on the appointed day who applies for registration as an employee at any time on or after the appointed day and is registered as an employee is entitled to have the days of continuous service with that employer preceding the date of his application included as days of service.
- (4) Notwithstanding anything in section 34 of the principal Act, an employer shall pay to the Board in respect of any person referred to in subsection (3) whose service with the employer has been continuous for a period of at least 10 years ending on the appointed day such amount as is assessed by the Board as contributions in respect of the paid long service leave contributions in relation to that person.
- (5) An amount assessed by the Board under subsection (4) shall, if not paid within the time specified by the Board, constitute a debt to the Board and is recoverable by the Board in any court of competent jurisdiction.

**14. Validation**

Where a regulation is made under section 3(4)(c) of the principal Act, any act done or thing omitted to be done before the coming into operation of that regulation which constituted a contravention of the principal Act but which would have been lawful if done or omitted to be done after the coming into operation of the regulation, shall be deemed to have been lawfully done.

<sup>4</sup> On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 51 had not come into operation. It reads as follows:

**51. Various written laws amended**

- (1) This section amends the written laws listed in the Table.

(2) Amend the provisions listed in the Table as set out in the Table.

<b>14. Construction Industry Portable Paid Long Service Leave Act 1985</b>		
Sch. cl. 1	<b>1.</b> Notwithstanding	<b>1. Service prior to application</b> Notwithstanding
Sch. cl. 2	<b>2.</b> (1) Notwithstanding	<b>2. Contributions for service prior to appointed day</b> (1) Notwithstanding