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CONSTRUCTION INDUSTRY
LONG SERVICE LEAVE
PAYMENTS BOARD
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IMPORTANT NOTICE

AMENDMENTS TO THE CONSTRUCTION INDUSTRY PORTABLE PAID LONG SERVICE LEAVE ACT 1985

The Act

The *Construction Industry Portable Paid Long Service Leave Act 1985* (WA) ("the Act") provides a scheme whereby workers who are employed in the construction industry may enjoy the benefits of long service leave based on continuous service in the construction industry (i.e. service with more than one employer) rather than for continuous employment with one particular employer.

The Act is administered by the Construction Industry Long Service Leave Payments Board ("the Board").

Under the scheme, employers pay set contributions to the Board based on the ordinary rate of pay of eligible employees. The Board, in turn, pays the employees covered by the scheme for long service leave after the requisite period of continuous service in the construction industry.

As the Act has been amended via the *Industrial Legislation Amendment Bill 2011*, the purpose of this letter is to alert you, as an organisation with Members which may be affected by the Act, to the changes to the Act. It is anticipated the amendments will come into operation on 1st April 2012. Formal proclamation / commencement date will be detailed on the Board's website www.walslboard.com.au as soon as it is available.

Among other things the amendments will replace outdated references to Commonwealth legislation and industrial instruments, clarify the scope of the Act and improve the administration of the portable long service leave scheme under the Act.

A full copy of the Act (as amended by the *Industrial Legislation Amendment Bill 2011*) is available to be viewed at: www.lslboard.com.au/theboard-actsandregulations.html

Some of the amendments to the Act are summarised below:

Definition of 'apprentice' will be by reference to the *Vocational Education and Training Act 1996* and equivalent training legislation in other jurisdictions. Refer Section 3(1) & 34(2A)

Definition of 'employer' will specifically detail 'labour hire agencies'. Refer Section 3(1)

Definition of 'construction industry' will specifically detail 'swimming pools and spa pools'. Refer Section 3(1)



Awards, Agreements and Orders made under either the *Industrial Relations Act 1979*, the *Fair Work Act 2009* (Cth) or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) are now defined by the term 'industrial instrument'. Refer Section 3(1)

Application offshore – defines the application of the Act to the offshore area as prescribed by Section 3(3) of the *Industrial Relations Act 1979*. Refer Section 3A

Employers are required to submit both the written statement (Return) and the contribution within 15 days after the end of the prescribed period. Refer Section 31(1)

Registration of Employers – Section 30 updated

Registration of Employees – now Section 31A

Employees will be automatically registered when an employer includes the employees on a Return submitted to the Board. Refer Section 31A(1)(a)

The Board can impose a surcharge where an employer fails to pay contributions within the specified time period (contributions are payable within 15 days after the end of the prescribed period). Refer Section 35A & 49(2A)

Provision for review of decisions of the Board to be undertaken by a single commissioner of the WAIRC, rather than a Board of Reference. Refer Section 50 & 51A

A claim by an employer for the recovery of a long service leave entitlement paid, will only apply where an employee becomes entitled to paid long service leave under another Act (eg. *Long Service Leave Act 1958*) or under an industrial instrument (Refer Section 3(1) for definition of industrial instrument). Refer Section 51

Board Members – amendments allow the Minister more discretion in the appointment of Board Members. Refer Sections 6, 7 & 8

Civil Penalty Provisions – no longer 'Offence Provisions'. Refer Section 28

Breaks in Service for unregistered employees. Refer Sections 21(1), 21(3A), 21(3) & 23(1)

For long service leave payments on termination of employment (after 10 years of service), employees will be entitled to proportionate payment for any service after 10 years of service (not just for completed years of service). Refer Section 22 (1)(b)

Deletion of Section 24 (2) Notification of leave.

Duties of Liquidators. Refer Section 38

Power to obtain information and evidence. Refer Section 45

Obstructing an Inspector or other person. Refer Section 52

Protection of persons giving information under the Act. Refer Section 53

The Board encourages you to take the time to consider the implications of the Act on your Members and if considered necessary, advise your Members to take appropriate steps to ensure compliance with the Act.

The Board employs inspectors who are able to assist you with regard to the application of the Act and the steps needed to take to comply with its provisions. They may be contacted on (08) 9476 5400 or staff@walslboard.com.au.
