

#### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to make amendments to the Building and Construction Industry Long Service Payments Act 1986 (the Principal Act) as follows:

- (a) to provide for notification by employers to the Building and Construction Industry Long Service Payments Corporation (the Corporation) of the employment of workers performing building and construction work,
- (b) to clarify the process of registering workers for the purposes of the Principal Act, including enabling the Corporation to register workers on the Corporation's own initiative,
- (c) to clarify the effect of the cancellation or suspension of registration of such workers,
- (d) to remove the requirement that an employer provide a worker with a certificate of service at the end of each financial year, after the worker ceases employment and at other specified times,
- (e) to clarify how the number of days' service of part-time workers is to be calculated for the purposes of the Principal Act,

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- (f) to provide that the Corporation is not required to serve an annual notice of service credits on a person whose registration has been cancelled or whose registration, in the opinion of the Corporation, is likely to be cancelled,
- (g) to provide that when calculating long service payments, a maximum figure of 38 hours per week (or such other period as is prescribed by the regulations under the Principal Act) is to be used as the hours in which ordinary pay is payable for the worker concerned,
- (h) to provide that when calculating a reimbursement payment to be paid to an employer who has provided alternative benefits to a worker (such as a long service payment under another long service leave scheme), the calculation is not to include the number of any days' service that the employer notified to the Corporation more than 2 years after the time required by the Principal Act,
- (i) to provide that, for the purpose of calculating long service payment amounts under section 29 or reimbursement payment amounts under section 32 of the Principal Act, the regulations under the Principal Act may make provision for the determination of minimum and maximum amounts for the rate of pay to be used in the calculation,
- (j) to provide that a worker or employer who is dissatisfied with the calculation of a payment affected by such a regulation may appeal to the Building and Construction Industry Long Service Payments Committee (the Committee),
- (k) to provide that persons contracting with a Crown instrumentality must provide the Crown instrumentality with evidence that the relevant long service levies have been paid,
- (l) to provide that the Corporation may pay a long service levy refund to a person other than the person who paid the long service levy if, in the Corporation's opinion, it is in the interests of justice to do so,
- (m) to deal with other miscellaneous matters to improve the operation of the Principal Act, including matters of a machinery, savings or transitional nature.

#### Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 repeals the Building and Construction Industry Long Service Payments

Amendment Act 1998.

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Schedule 1 Amendment of Building and

Construction Industry Long Service

Payments Act 1986 No 19

Schedule 1 [1] substitutes the definition of Commonwealth industrial instrument in the Principal Act to take account of changes to Commonwealth legislation. Under the proposed new definition, the regulations specify awards, workplace agreements or other agreements under Commonwealth legislation (or classes of them) for the purposes of the definition.

Schedule 1 [2] and [27] make law revision amendments to take account of the change of name of "Employers First" to the "Australian Federation of Employers and Industries".

Schedule 1 [4] and [5] make amendments relating to the registration of workers in the building and construction industry long service payments scheme under the Principal Act (the scheme).

Currently, a building and construction worker may apply for registration, but section 16 (2) of the Principal Act also provides that an employer must apply for registration of the employer's workers within 7 days after the worker commences to perform building and construction work (unless the worker is already registered or an application for registration is pending).

Schedule 1 [4] and [5] omit section 16 (2) of the Principal Act and insert instead proposed section 16A to provide that an employer of a building and construction worker must notify the Corporation within 7 days after the worker commences to perform building and construction work.

Schedule 1 [5] also substitutes section 17 (Registration) of the Principal Act to enable the Corporation to register a person as a worker under the scheme in response to an application by the person or on the Corporation's own initiative.

Schedule 1 [5] makes further law revision amendments to modernise the language used in relation to registration. Under the new provisions a person comes under the scheme by being "registered" rather than having the person's "registration approved". Schedule 1 [3], [6], [23] and [24] make consequential amendments.

Schedule 1 [7] and [8] make law revision amendments that omit archaic language that refer to the cancellation of registration by the removal of a name from the register. In future a person's registration is simply "cancelled".

Section 19 (1B) of the Principal Act provides that a worker's registration may be suspended in certain circumstances. Schedule 1 [9] inserts provisions to clarify the effect of such a suspension.

Schedule 1 [10] removes the requirement that an employer of a worker provide a worker with a certificate of service at the end of each financial year, after the worker ceases employment and at such other times specified by the Corporation. It is noted that workers are served with an annual notice of their service credits under section 25

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of the Principal Act and can also view their accumulated service credits on the Corporation's website at any time.

Schedule 1 [11] makes an amendment to provide that, when calculating the number of days' service for part-time workers, the Corporation is to:

(a) count any day on which the registered worker performed building and construction work for more than half the worker's ordinary work day as a full day of employment, and

(b) disregard any day on which the registered worker performed non-building and construction work for more than half the worker's ordinary work day.

Schedule 1 [12] removes a redundant provision. Schedule 1 [13] makes a law revision amendment.

Schedule 1 [14] makes an amendment to provide that the Corporation is not required to serve an annual notice of service credits on a person whose registration has been cancelled or whose registration, in the opinion of the Corporation, is likely to be cancelled. If the Corporation has not served a notice on a person because the person's registration was likely to be cancelled and by the following 30 June the person's registration has not been cancelled, the Corporation must, as soon as possible, ensure that the relevant notice is served on the person.

Schedule 1 [15] and [16] provide that when calculating long service payments, a maximum figure of 38 hours per week (or such other period as is prescribed by the regulations) is to be used as the hours in which ordinary pay is payable for the worker concerned.

Schedule 1 [17] provides that when calculating a reimbursement payment to be paid to an employer who has provided alternative benefits to a worker (such as a long service payment under another long service leave scheme), the calculation is not to include the number of any days' service that the employer notified to the Corporation more than 2 years after the time required by section 20 of the Principal Act. This provision will not have effect until 1 July 2011.

Schedule 1 [18] provides that an employer who has provided alternative benefits to a worker (such as a long service payment under another long service leave scheme) is entitled to be paid a reimbursement payment under section 32 of the Principal Act in respect of a worker whose registration has been cancelled.

Schedule 1 [19] provides that, for the purpose of calculating long service payment amounts under sections 29 and 32 of the Principal Act, the regulations may make provision for the determination of minimum and maximum amounts for the rate of pay to be used in the calculation.

The Minister administering the Principal Act is to consult with the Committee before recommending the making of such a regulation. The Committee is to advise and make recommendations to the Minister on the operation of, and any amendment to or repeal of, any such regulation.

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The proposed section also provides that if an amount of a long service payment to a worker or a payment to an employer is, because of the operation of such a regulation, less than the amount it would have been in the absence of the regulation, the Corporation is to notify the worker or employer in writing of that fact and give an explanation of the operation of the regulation.

Schedule 1 [25] provides that a worker or employer who has received such a notification and is dissatisfied with the calculation of the long service payment may appeal to the Committee. The Committee, in determining the appeal, may confirm the calculation of the long service payment or set it aside and make a new calculation in substitution for that calculation.

Section 38 of the Principal Act provides that where the Crown enters into a contract with a person to erect a building (or execute part of the work of erecting the building) that contractor (and not the Crown) is liable to pay any relevant long service levy.

Schedule 1 [20] inserts a new section to provide that where section 38 applies, it is the duty of the Crown instrumentality concerned to withhold any instruction to, or permission, approval or authorisation for, the person to commence work under the contract, unless the person has produced to the Crown instrumentality evidence that the long service levy due in respect of the building has been paid by the person (such

as a receipt from the Corporation). The proposed new section also provides that it is the duty of the Crown instrumentality to keep a copy of any such evidence for at least 6 years after it was produced.

Section 42 (6) of the Principal Act allows persons to apply for a refund of certain long service levies paid in error. Such an application must be made within 3 months after the payment concerned was made, or within such further time as the Corporation may in a particular case allow. Schedule 1 [21] makes an amendment to increase the time within which such an application must be made from 3 months to 12 months (or such other period as may be prescribed by the regulations) after the payment concerned was made.

Schedule 1 [22] inserts new provisions into the Principal Act to provide that the Corporation may pay a refund under section 42 of that Act to a person other than the person who paid the long service levy if, in the Corporation's opinion, it is in the interests of justice to do so.

Schedule 1 [26] provides that the personal representative of a deceased worker may make certain appeals under the Principal Act on behalf of the person.

Schedule 1 [28] and [29] make amendments of a savings and transitional nature.