

South Australia

Construction Industry Long Service Leave (Miscellaneous) Amendment Bill 2024

A BILL FOR

An Act to amend the *Construction Industry Long Service Leave Act 1987*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Construction Industry Long Service Leave Act 1987*

3—Amendment of long title

Long title—delete "building" and substitute:

5 construction

4—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of *apprentice* insert:

authorised officer means a person appointed as an authorised officer under section 39A;

10 (2) Section 4(1), definitions of *the Board*, *builder*, *building*, *building industry*, *building site* and *building work*—delete the definitions and substitute:

Board means the Construction Industry Long Service Leave Board;

CEO means the chief executive officer of the Board engaged or appointed under section 13;

15 *civil penalty*—see section 37AA;

(3) Section 4(1), definition of *construction industry*—delete the definition and substitute:

construction industry means the construction industry as determined under Schedule 1 and includes additional work or activities brought within the ambit of this definition by the regulations;

20 (4) Section 4(1), definition of *corresponding law*—delete the definition and substitute:

corresponding law means a law of another State or the Commonwealth prescribed by the regulations to be a corresponding law;

(5) Section 4(1), definitions of *the electrical and metal trades industry* and *electrical or metal trades work*—delete the definitions

25 (6) Section 4(1), definition of *the Fund*—delete the definition and substitute:

Fund means the *Construction Industry Fund* referred to in Part 4;

(7) Section 4(1), definition of *inspector*—delete the definition

(8) Section 4(1), after the definition of *levy*—insert:

Maximum civil penalty—see section 37AA;

30 *on site work* means work within the construction industry undertaken at a place at which construction work is carried out and includes work at an adjacent site (and *on site* and *off site* have correlative meanings);

(9) Section 4(1), definition of *the prescribed period*—delete the definition and substitute:

preservation period means—

35 (a) in reference to a person who has an effective service entitlement of less than 1 300 days—24 months; or

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Part 2—Amendment of *Construction Industry Long Service Leave Act 1987*

- (b) in reference to a person who has an effective service entitlement of 1 300 days or more—36 months;

public sector agency means—

- (a) an administrative unit under the *Public Sector Act 2009* (including the Chief Executive of such an administrative unit); or
- (b) an agency or instrumentality of the Crown;

registered employer means a person registered as an employer under Part 5A;

- (10) Section 4(1), definition of **structure**—delete the definition and substitute:

State includes a Territory.

- (11) Section 4(3)—delete subsection (3) and substitute:

- (3) Subject to this Act, a person's ordinary weekly pay will be an amount determined by averaging the person's weekly earnings as a construction worker over the period of 52 weeks immediately preceding the relevant date, subject to the following qualifications:

- (a) a week in which the person did not act as a construction worker must be disregarded;
- (b) the regulations may—
- (i) specify payments made to or for the benefit of a construction worker that must be included for the purposes of any determination or calculation under this subsection; and
- (ii) specify payments made to or for the benefit of a construction worker that must be excluded for the purposes of any determination or calculation under this subsection;
- (c) if a person has not been a construction worker at all during the period of 52 weeks immediately preceding the relevant date, the person's ordinary weekly pay will be taken to be an amount that represents the average ordinary weekly pay that was applicable under this Act for all persons engaged in the kind of work last performed by the person as a construction worker who took leave or received an entitlement in the financial year immediately preceding the relevant date;
- (d) if a calculation under this subsection would result in a person's ordinary weekly pay falling below a level set by an award or enterprise agreement as a minimum amount payable for ordinary work of the kind performed, or last performed, by the person as a construction worker, the person's ordinary weekly pay will be taken to be that amount.

5—Amendment of section 5—Application of this Act

- (1) Section 5, heading—delete "this"

(2) Section 5(1aa), (1), and (1a)—delete subsections (1aa), (1) and (1a) and substitute:

(1) Subject to this section, this Act applies to a person's employment if the person is within the ambit of subsection (1a), (1ac) or (1b).

(1a) A person is within the ambit of this subsection if—

5 (a) the person is engaged under a contract of service to perform work in the construction industry; and

(b) the person's work qualifies under the regulations by virtue of being engaged in work of a kind prescribed by the regulations; and

10 (c) the person's work—

(i) involves on site work that makes up the whole, or a proportion of at least one-half, of the period of employment over—

15 (A) in the case of a person employed for less than 1 month—the whole period of employment; or

(B) in the case of a person employed for 1 month or more but less than 3 months—the first month of employment; or

20 (C) in the case of a person employed for 3 months or more—any 3 month period of employment; or

25 (ii) satisfies any requirement prescribed by the regulations for the purposes of this paragraph.

(1ab) Without affecting any accrued effective service entitlement, subsection (1a) ceases to apply to a worker's employment if—

30 (a) in a case where subsection (1a)(c)(i) applies—the person has not worked on site for the last 3 months; or

(b) in a case where subsection (1a)(c)(ii) applies—the person ceases to qualify under subsection (1a) due to circumstances prescribed by the regulations for the purposes of this paragraph.

(1ac) A person is within the ambit of this subsection if—

35 (a) the person is engaged under a contract of service to perform work in the construction industry; and

(b) the person's work is not within the ambit of subsection (1a); and

40 (c) the person's work qualifies under this subsection by virtue of satisfying any requirement prescribed by the regulations for the purposes of this paragraph; and

- (d) the person's employer has registered with the Board as an employer for the purposes of this Act; and
- (e) the person's employer and the Board have agreed that this Act should apply to the person.

5 (3) Section 5(1b)(a)—delete "(1) or (1a)" and substitute:

(1a) or (1ac)

(4) Section 5(2)—delete "subsection (1)(c)(i)(C)" and substitute:

subsection (1a)(c)(i)(C)

(5) Section 5(2b)—delete "(1aa)" and substitute:

10 (1)

(6) Section 3(3a)—delete subsection (3a) and substitute:

- (3a) Subsections (1a) and (1ac) do not apply in relation to a person who falls within any class of employees excluded from the operation of that subsection by the regulations.

15 **6—Insertion of heading**

After the heading to Part 2 insert:

Division 1—Establishment and governance

7—Substitution of section 7

Section 7—delete the section and substitute:

20 **7—Membership of Board**

(1) The Board consists of 9 members, appointed by the Minister, of whom—

(a) 1 will be a person appointed as the presiding member of the Board; and

25 (b) 4 will be persons appointed after the Minister has taken into account the recommendation of employer associations, to represent the interests of employers in the construction industry; and

30 (c) 4 will be persons appointed after the Minister has taken into account the recommendation of the United Trades and Labor Council, to represent the interests of construction workers.

(2) The Minister may appoint a suitable person to be a deputy of a member of the Board and the person may act as a member of the Board—

35 (a) in the absence from the duties of office of the member for whom the person has been appointed as deputy; or

(b) if the office of the member for whom the person has been appointed as deputy becomes vacant—until the vacancy is filled by the Minister.

(3) A deputy member is to be appointed after taking into account recommendations from employer organisations or the United Trades and Labor Council in the same way as a member of the Board is appointed.

5

(4) If—

(a) the presiding member is absent from the duties of office or the office of the presiding member is vacant; and

(b) there is no deputy to act as the presiding member under subsection (2),

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the remaining members of the Board may appoint one of their number to act as the presiding member as required (and may revoke any such appointment at any time).

8—Amendment of section 8—Conditions of membership

(1) Section 8(1)—delete "the Governor" and substitute:

15

the Minister

(2) Section 8(2) and (3)—delete subsections (2) and (3) and substitute:

(2) The Minister may remove a member of the Board from office—

(a) for breach of, or noncompliance with, a condition of appointment; or

20

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily; or

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(d) if the member was recommended for appointment on account of being an officer or employee of an employer association or an employee association and the member has ceased to be such an officer or employee; or

30

(e) if the member, having been appointed to represent the interests of employers or construction workers in the construction industry, ceases, in the opinion of the Minister, to be a suitable person to act as such a representative.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

35

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence or is sentenced to imprisonment for an offence; or

(e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

40

(f) is removed from office under subsection (2).

9—Amendment of section 10—Proceedings at meetings of the Board

- (1) Section 10, heading—delete "the"
- (2) Section 10(1)—after "by a person" insert:
5 appointed under section 7(4) or, if no such appointment has been made or that person is absent, by a person
- (3) Section 10(3)—delete "Four" and substitute
Five
- (4) Section 10—after subsection (5) insert:
- 10 (5a) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
- 15 (b) each participating member is capable of communicating with every other participating member during the conference.
- (5b) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
- 20 (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
- 25 (b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.

10—Substitution of section 13

Section 13—delete the section and substitute:

Division 2—Staff and facilities**13—Chief executive officer**

- 30 (1) There will be a chief executive officer of the Board.
- (2) The CEO will be engaged or appointed by the Board (on terms and conditions determined by the Board).
- 35 (3) Subject to any decision, determination or policy of the Board, the CEO is responsible to the Board for—
- (a) managing the Board's business efficiently and effectively; and
- (b) supervising the staff engaged in the work of the Board.

- (4) Subsection (3) does not derogate from the operation of section 17 of the *Portable Long Service Leave Act 2024*.

13A—Staff

- (1) The staffing arrangements for the Board will be determined by the Board.
- (2) A staffing arrangement under subsection (1) may provide for 1 or both of the following:
- (a) the Board engaging staff as employees or contractors of the Board;
 - (b) with the agreement of a public sector agency—the Board making use of the staff of the public sector agency.

13B—Facilities

The Board may, by arrangement with a public sector agency, make use of the services or facilities of the public sector agency.

11—Amendment of section 14—Effective service entitlement

- (1) Section 14(2a)—delete the subsection and substitute:
- (2a) However, a person cannot be credited with more than 260 days of effective service entitlement in a financial year.
- (2) Section 14(4)(c)—delete "the prescribed period" and substitute:
- the preservation period
- (3) Section 14—after subsection (5) insert:
- (6) If the Board is satisfied that a person has been incorrectly registered as a construction worker under this Act, the Board may, in accordance with a policy adopted by the Board—
 - (a) cancel an effective service entitlement assigned to the person; and
 - (b) take such action as the Board considers appropriate.

12—Amendment of section 16—Long service leave entitlement

- (1) Section 16(2) and (3)—delete subsections (2) and (3) and substitute:
- (2) Long service leave must be granted by the employer by whom the construction worker is employed when the entitlement arises as soon as practicable after the person becomes entitled to the leave and applies to the employer to take the leave.
 - (3) However—
 - (a) if a person becomes entitled to long service leave under subsection (1) within the first 60 days after commencing work with the employer, the person is not entitled to commence leave until after that 60 day period has expired; and

- (b) an application for long service leave under subsection (2) must be made at least 60 days before the construction worker seeks to commence the leave; and
- (c) the commencement of long service leave must take into account the reasonable needs of the employer; and
- (d) an employer and a construction worker may agree that the worker take leave in separate periods subject to the qualification that each such period must be at least 1 week in duration.

(3a) Subsection (3)(a) and (b) operate subject to any agreement between the employer and the construction worker about when the worker will take long service leave.

(2) Section 16—after subsection (4) insert:

(4a) If a payment under subsection (4) is to include an amount for service undertaken in another State, that part of the payment that relates to that service will be calculated in accordance with the relevant reciprocal arrangement under section 38.

13—Amendment of section 18—Preservation of entitlement in certain cases

(1) Section 18(1)(c)—delete "the prescribed period" and substitute:

the preservation period

(2) Section 18(3), definition of "supervisor"—delete the definition and substitute:

supervisor means a person (other than a person within the ambit of section 5(1a)) who is engaged in work involving the supervision of construction workers prescribed by the regulations for the purposes of this definition.

14—Amendment of section 19—Employment during leave

(1) Section 19(1)—delete subsection (1) and substitute:

(1) A construction worker must not, while on long service leave, engage in any other employment in place of their employment as a construction worker.

Maximum civil penalty: \$1 000.

(2) Section 19(2), penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$1 000.

15—Amendment of section 20—The Construction Industry Fund

(1) Section 20, heading—delete "The"

(2) Section 20(1)—delete subsection (1) and substitute:

(1) The *Construction Industry Fund* continues in existence.

(3) Section 20(3)(a)—delete paragraph (a) and substitute:

(a) money credited to the Fund by operation of this Act (or an amendment to this Act); and

16—Amendment of section 27—Returns by employers

Section 27(5)—delete subsection (5) and substitute:

- (5) An employer must not fail to comply with a requirement imposed under this section.

5 Maximum civil penalty: \$10 000.

17—Amendment of section 28—Recovery on default

Section 28(4), penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$10 000.

18—Repeal of section 30

10 Section 30—delete the section

19—Amendment of section 32—Refund of overpayments

- (1) Section 32—after "the overpayment" insert:

within the period prescribed by the regulations

15 (2) Section 32—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- 20 (2) If a levy has been paid incorrectly and the Board subsequently discovers, as a result of an error associated with the payment of the levy, that it has made a payment in respect of a long service leave entitlement, or purported long service leave entitlement, for which it was not liable, the Board may deduct from an amount that would otherwise be refunded under subsection (1) an amount equal to the payment made by the Board as a result of the error.

20—Insertion of Part 5A

After section 32 insert:

25 **Part 5A—Registration of employers**

32A—Board to register employers

The Board must keep a register of employers in the construction industry.

32B—Application for registration as registered employer

30 (1) An employer who employs 1 or more construction workers must apply for registration on the register of employers.

- (2) The application must be made to the Board.

- (3) The application must—

(a) be made in a form approved by the Board; and

35 (b) include, or be accompanied by, any information required by the form; and

- (c) be made within 28 days after the employer first employs a construction worker.
- (4) The Board may, by written notice, request an applicant to do the following things within a reasonable time stated in the notice:
- 5 (a) provide further information or documents relevant to the application;
- (b) verify information or documents forming part of the application including by statutory declaration.
- (5) An applicant must comply with a request under subsection (4) within
10 the stated time, unless the applicant has a reasonable excuse.
- (6) An employer must not contravene a requirement under this section.
Maximum civil penalty: \$10 000.

32C—Employer to give notice of change to information

- 15 (1) A registered employer must give notice to the Board about any change to the information given to the Board by the employer for the purposes of, or in connection with, its registration within 28 days after the change happens.
- (2) A notice under subsection (1) must be in a form approved by the Board.
- 20 (3) A registered employer must not contravene a requirement under this section.
Maximum civil penalty: \$10 000.

32D—Board may require information or documents from employer

- 25 (1) This section applies if the Board believes that a person is or was an employer in the construction industry, but the person is not registered on its register of employers.
- (2) The Board may, by written notice given to the person, require the
30 person to give the Board the information or documents stated in the notice that are necessary to enable the Board to decide whether the person is or was an employer in the construction industry.
- (3) The person must not fail to comply with the notice within the stated time.
Maximum civil penalty: \$10 000.
- 35 (4) If the Board decides that the person is an employer in the construction industry, the Board must—
- (a) register the person on its register of employers; and
- (b) give the person notice of the registration.
- 40 (5) This section does not limit the power of the Board to require the provision or production of information under another section.

32E—Cancellation of registration

- 5
- (1) A registered employer may, by notice a form approved by the Board, apply to the Board for the cancellation of the employer's registration if the registered employer stops engaging workers in the construction industry.
- (2) The Board must consider the application and decide to—
- (a) grant the application and cancel the employer's registration; or
 - (b) refuse to grant the application.
- 10
- (3) If the Board decides to grant the application, the Board must—
- (a) give the employer written notice of its decision; and
 - (b) enter in the Board's register of employers that the employer is not a registered employer in the construction industry.
- 15
- (4) If the Board refuses to grant the application, the Board must give the employer written notice of its decision in accordance with the regulations.
- (5) Nothing in this section requires the Board to remove information from a register that the Board considers should be retained for the purposes of the administration of this Act.

20 **32F—Related provisions**

- (1) Without limiting any other provision, the Board may amend the register of employers at any time to ensure that the register is kept up to date.
- 25
- (2) The register of employers will be kept by the Board in such form as the Board thinks fit (including in electronic form).
- (3) The register of employers must be kept available for inspection, without fee, in accordance with the regulations and a copy of an entry in the register of employers may be obtained on payment of the prescribed fee.

30 **21—Insertion of Part 6A**

After section 37 insert:

Part 6A—Civil penalties

37AA—Civil penalties

- 35
- (1) If the words "Maximum criminal penalty" and "Maximum civil penalty" both appear at the end of a provision of this Act, this indicates that the Board may, as an alternative to criminal proceedings, bring proceedings in SAET (constituted as the South Australian Employment Court) for the imposition of a civil penalty in respect of a contravention of the provision.

- 5
- (2) If the words "Maximum civil penalty" appear at the end of a provision of this Act without the words "Maximum criminal penalty", this indicates that the Board may bring proceedings in SAET (constituted as the South Australian Employment Court) for the imposition of a civil penalty in respect of a contravention of the proceedings (and in such a case a contravention of the provision does not constitute a criminal offence).
- 10
- (3) The proceedings in SAET for the imposition of a civil penalty in respect of a contravention may be brought against any person who is involved in the contravention (and a person who is found to have been involved in a contravention of a provision is taken to have contravened the provision).
- 15
- (4) A person is ***involved in a contravention*** of a provision if (and only if) the person—
- (a) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (b) has induced the contravention, whether by threats or promises or otherwise; or
- 20
- (c) has aided, abetted, counselled or procured the contravention; or
- (d) has conspired with others to effect the contravention.
- 25
- (5) If in proceedings for the imposition of a civil penalty SAET is satisfied, on the balance of probabilities, that the person against whom the proceedings are brought has contravened the provision to which the proceedings relate, SAET may order the person to pay an amount as a civil penalty not exceeding the amount specified by this Act as the maximum civil penalty in relation to that contravention.
- 30
- (6) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, a civil penalty may be imposed in relation to the contravention of any 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- 35
- (7) If proceedings are brought against a person for the imposition of a civil penalty under this section, criminal proceedings may not be brought against the person in respect of the same contravention (or alleged contravention).
- (8) Proceedings for the imposition of a civil penalty under this section may only be brought by the Board.
- 40
- (9) The amount of any civil penalty imposed under this section is payable to the Board.
- (10) Proceedings for the imposition of a civil penalty under this section may be commenced at any time within 6 years after the day on which the relevant contravention occurred.

- (11) SAET must apply the rules of evidence and procedure when hearing proceedings under this section.
- (12) SAET may, in any proceedings under this section, only order a party to pay costs to another party if SAET believes that the party ordered to pay the costs has acted unreasonably and, in so doing, caused the other party to incur costs or additional costs.

22—Amendment of section 37A—Self-employed contractors and working directors

- (1) Section 37A(3)(c)—delete "the prescribed period" and substitute:
the preservation period
- (2) Section 37A(3b)(b)—delete "the prescribed period" and substitute:
the preservation period
- (3) Section 37A(7)(b)—after subparagraph (iii) insert:
- (iv) in the case of a person registered under subsection (1)(b)—ceased to work in the construction industry (whether or not remaining as a director of the relevant body corporate); or
- (v) decided to withdraw from the long service leave scheme established by this Act,
- (4) Section 37A(8)(a)—delete paragraph (a) and substitute:
- (a) a registered person makes an application to the Board under this subsection in a form approved by the Board to withdraw from the long service leave scheme established by this Act; and
- (5) Section 37A(10)(d)—delete "the prescribed period" and substitute:
the preservation period
- (6) Section 37A—after subsection (10) insert:
- (10a) If—
- (a) a registered person has an effective service entitlement of less than 1 820 days; and
- (b) the registered person has not previously had an effective service entitlement of 2 600 days or more; and
- (c) the registered person ceases to make payments under this section for a continuous period equal to, or longer than, a period prescribed by the regulations, other than because of physical or mental disability; and
- (d) the registered person has not become a person to whose employment this Act applies (see section 5) within the preservation period after the period prescribed under paragraph (c); and
- (e) no other right to the preservation of the effective service entitlement exists under this Act,

the effective service entitlement is cancelled and the Board must pay to person an amount equal to the amount paid by the person under this section together with interest credited under this section.

23—Amendment of section 38—Reciprocal arrangements with other States and Territories

- (1) Section 38(1)—delete "may make a reciprocal arrangement with the Minister of State of the State or Territory responsible for" and substitute:

, or the Board acting with the approval of the Minister, may make a reciprocal arrangement with an authority of another State that is responsible for, or involved in the implementation of,

- (2) Section 38(1)(a)—delete paragraph (a) and substitute:

- (a) long service leave entitlements for construction workers moving from this State to that State or moving from that State to this State; or

24—Substitution of sections 38B and 39

Sections 38B and 39—delete the sections and substitute:

39—Power to require information

- (1) For the purposes of investigating any prescribed matter, the Board may, by written notice, require any person—

- (a) to furnish to the Board, within the time specified in the notice, such information as may be required by the Board in a form determined by the Board; or
- (b) to produce to the Board, within the time specified in the notice, such documents as may be required by the Board; or
- (c) to attend for the purpose of giving evidence before the Board at a time and place specified in the notice.

- (2) The Board may—

- (a) require that information furnished to it in writing be verified by statutory declaration; and
- (b) require that a person attending before it give evidence and, if it thinks fit, give that evidence on oath or by affirmation.

- (3) The Board is authorised to administer an oath or to take an affirmation for the purposes of subsection (2).

- (4) If a person—

- (a) who has been served with a notice to furnish information to the Board, or to produce any documents to the Board, fails without reasonable excuse to comply with the notice; or
- (b) who has been served with a notice to attend before the Board fails without reasonable excuse to attend in compliance with the notice; or

- (c) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

the person is guilty of an offence.

Maximum criminal penalty: \$10 000.

Maximum civil penalty: \$10 000.

- (5) A person is not obliged to answer a question under this section if the answer would tend to incriminate the person of an offence, or to produce a document if it or its contents would tend to incriminate the person of an offence.

- (6) In this section—

prescribed matter means—

- (a) any matter relevant to ascertaining whether a person is liable to make a payment to the Board under this Act, and, if so, the extent of that liability; and
- (b) any other matter prescribed by the regulations.

39A—Authorised officers

- (1) The Minister may appoint such authorised officers as the Minister thinks fit for the purposes of this Act.
- (2) Each authorised officer appointed by the Minister must be furnished with an appropriate identity card.
- (3) An authorised officer must produce the identity card for inspection by any person who questions their authority to exercise the powers of an authorised officer under this Act.
- (4) The Minister may, by written notice served on an authorised officer, revoke the appointment of the authorised officer under this Act.

39B—Powers of inspection

- (1) For the purposes of this Act, an authorised officer may at any reasonable time—
 - (a) enter any premises which the authorised officer has reasonable cause to believe are premises of an employer in the construction industry or premises where a construction worker is employed or works; or
 - (b) require the production of any document—
 - (i) required to be kept by or under this Act; or
 - (ii) relating to the service of construction workers; or
 - (iii) relevant to long service leave under this Act; or
 - (c) examine and copy, or take extracts from, any document, or require an employer to provide a copy of any document; or
 - (d) seize and remove anything that may constitute evidence of an offence against this Act; or

- (e) take photographs or recordings; or
- (f) require any person to answer, to the best of the person's knowledge or belief, any question relevant to the administration, operation or enforcement of this Act.

- 5 (2) An authorised officer may, in the exercise of powers under this section—
- (a) be accompanied by such assistants as may be necessary or desirable in the circumstances; and
 - (b) ask any question through an interpreter.
- 10 (3) A person must not—
- (a) hinder or obstruct an authorised officer in the exercise of a power conferred by this section; or
 - (b) refuse or fail to answer truthfully to the best of the person's knowledge or belief a question put to the person under this
 - 15 (c) without lawful excuse, fail to comply with a requirement made under this section.
- Maximum criminal penalty: \$10 000.
Maximum civil penalty: \$10 000.
- 20 (4) A person is not required to answer a question under this section if the answer would tend to incriminate the person or make the person liable to a penalty.

25—Amendment of section 40—Records

- (1) Section 40(1), penalty provision—delete the penalty provision and substitute:
- 25 Maximum civil penalty: \$5 000.
- (2) Section 40(2)—delete "five years" and substitute:
- 7 years
- (3) Section 40(2), penalty provision—delete the penalty provision and substitute:
- Maximum civil penalty: \$5 000.
- 30 (4) Section 40(4), penalty provision—delete the penalty provision and substitute:
- Maximum civil penalty: \$10 000.

26—Insertion of section 40A

After section 40 insert:

40A—Recovery of amounts and crediting entitlements

- 35 (1) If an amount is payable or recoverable under this Act, including an amount of levy that should have been paid or an amount in respect of an employer who should have furnished one or more returns but failed to do so, the period of recovery of the amount is 7 years from which it was payable or able to be recovered.

- (2) The period for retrospectively crediting an effective service entitlement is 7 years from the date on which the work to which the entitlement relates was carried out.
- (3) This section applies despite any other Act or law.

5 **27—Insertion of sections 42A, 42B and 42C**

After section 42 insert:

42A—No contracting out

- (1) The provisions of this Act have effect despite any provision to the contrary in any contract.
- 10 (2) A provision of an agreement, whether in writing or not, under which the operation of this Act is, or is purported to be, excluded, modified or restricted, or has the effect of excluding, modifying or restricting the operation of this Act, is void.

42B—Adverse action against construction worker

- 15 (1) An employer must not dismiss or threaten to dismiss a construction worker from, or prejudice or threaten to prejudice a construction worker in, employment because the construction worker is entitled to—
 - (a) long service leave under section 16; or
 - 20 (b) an amount under section 17.Maximum civil penalty: \$10 000.
- (2) If proceedings are brought in SAET for a contravention of subsection (1) and SAET orders the employer to whom the proceedings relate to pay an amount as a civil penalty, SAET may, on application by the
25 relevant construction worker—
 - (a) award compensation to the applicant for loss resulting from the contravention of subsection (1); and
 - (b) if the applicant was dismissed from employment—order the
30 employer to re-employ the applicant on conditions determined by the court.

42C—False or misleading information

- A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information or return provided under this Act.
35
Maximum criminal penalty: \$10 000.
Maximum civil penalty: \$10 000.

28—Amendment of section 43—Offences

(1) Section 43(1)—delete subsection (1) and substitute:

(1) Proceedings for an offence against this Act may only be commenced by—

- (a) the Minister; or
- (b) the Director of Public Prosecutions; or
- (c) the Board; or
- (d) a person acting with the written authorisation of the Minister.

(2) Section 43(4), penalty provision—delete the penalty provision and substitute:

Maximum criminal penalty: \$10 000.

Maximum civil penalty: \$10 000.

29—Substitution of section 45

Section 45—delete the section and substitute:

45—Confidentiality and provision of information

(1) A person must not divulge or communicate information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person to whom the information relates; or
- (b) in connection with the administration, operation or enforcement of this or any other Act; or
- (c) to a person concerned in the administration, operation or enforcement of a corresponding law; or
- (d) for the purposes of legal proceedings; or
- (e) as authorised by the regulations.

(2) A person employed or engaged in the administration of this Act is authorised to provide prescribed information or documents to another person or body in accordance with the regulations.

(3) The regulations may place restrictions on the disclosure of information or documents provided under subsection (1) or (2).

(4) Subsection (2) operates despite any other Act or law.

45A—General exemptions

(1) Subject to this section, the Minister may, by notice in the Gazette—

- (a) exempt a person or class of persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of this Act; or

(b) vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.

(2) The Minister must consult with the Board before making a notice under subsection (1).

(3) A person must not contravene a condition of an exemption.
Maximum civil penalty: \$10 000.

30—Amendment of section 46—Regulations

(1) Section 46(1)(c) and (d)—delete paragraphs (c) and (d) and substitute:

(c) require records or other information to be kept and provide for the provision of any report, document or other information to any person or body that performs a function under this Act; and

(d) prescribe civil penalties, not exceeding \$5 000, for a contravention of the regulations (and section 37AA will apply to a contravention as if a reference in that section to this Act included a reference to the regulations).

(2) Section 46—after subsection (2) insert:

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) provide for a matter to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or the Board.

(4) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

31—Substitution of Schedules

Schedules 1 to 5—delete Schedules 1 to 5 (inclusive) and substitute:

Schedule 1—Constitution of *construction industry*

1—What constitutes the *construction industry*

(1) The *construction industry* is the industry of constructing, deconstructing, reconstructing, renovating, altering, demolishing, relocating, maintaining or repairing any of the following:

(a) buildings;

(b) spa pools and swimming pools;

(c) roads, railways, airfields or other works for the passage of anything;

(d) breakwaters, docks, jetties, piers or wharves;

(e) works for solid waste disposal;

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- 5
- (f) works for the dividing, subdividing or developing of land;
- (g) works for the improvement or alteration of a harbour, river or watercourse for navigation purposes;
- (h) works for the storage or supply of water or for flood mitigation;
- (i) works for the irrigation of land;
- (j) works for the conveyance, treatment or disposal of sewage or of effluent from any premises;
- 10
- (k) works for extracting, refining, processing or treating materials or for producing or extracting products and by-products from materials;
- (l) works for conveying products, by-products or materials;
- (m) works for the drainage of land;
- (n) works for the storage of liquids, other than water, or gases;
- 15
- (o) works for the generation, supply or transmission of electric power;
- (p) works for telecommunication or for the transmission of radio or television;
- (q) bridges, viaducts, aqueducts or tunnels;
- 20
- (r) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
- (s) pipe lines;
- (t) navigational lights, beacons or markers;
- (u) pile driving works;
- 25
- (v) sporting or recreational facilities;
- (w) earthworks, other than farming;
- (x) fences, other than fences on farms;
- (y) structures, fixtures or other works not included in paragraphs (a) to (x), but not including earthworks for farming or fences on farms.
- 30
- (2) The **construction industry** also includes landclearing and site preparation, other than for farming.
- (3) The **construction industry** also includes the industry of, whether on or off site—
- 35
- (a) constructing a thing, other than ordinary stock for sale, in accordance with working drawings; or
- (b) deconstructing, reconstructing, renovating, altering, demolishing, relocating, maintaining or repairing a thing, other than ordinary stock for sale, constructed in accordance with working drawings.
- 40

- (4) The *construction industry* does not include the industry of performing maintenance or repairs of a minor nature to anything mentioned in subclause (1) or (3) for a person not substantially engaged in work or an activity mentioned in subclause (1), (2) or (3).

5

2—Prescribed exclusions

The *construction industry* does not include any work or activity excluded from the operation of this Schedule by the regulations.

Schedule 1—Transitional provisions

1—Interpretation

10

- (1) In this Schedule—

newly covered employer means a person who becomes an employer under the principal Act because of the amendment of that Act by this Act (including by the making of a regulation to coincide with the commencement of this Act or a provision of this Act);

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newly covered worker means a construction worker employed by a newly covered employer (whether before or after the commencement of this Act);

principal Act means the *Construction Industry Long Service Leave Act 1987*;

transition period means the period of 2 years commencing on the day on which clause 2 comes into operation.

20

- (2) Other terms used in this Schedule have meanings consistent with the meanings they have in the principal Act.

2—Newly covered employers

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- (1) A newly covered employer is not required to register with the Board until the end of the transition period (but may register with the Board at any time during the transition period).
- (2) Until a newly covered employer registers with the Board, any newly covered workers of the employer will not be taken to be construction workers under the principal Act.

3—Current disputes

If—

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- (a) the Board has, immediately before the commencement of this clause, been in dispute with a newly covered employer about whether or not—

(i) the employer should have been, or should be, registered under the principal Act; or

35

(ii) 1 or more workers employed by the employer were or are construction workers within the meaning of the principal Act; and

- (b) the dispute is settled, resolved or discontinued on the basis that this Act has been enacted,

the Board will not collect or recover any unpaid, or allegedly unpaid, levy in relation to a period preceding that commencement.

4—Transitional regulations

- (1) The Governor may, by regulation, make provisions, or additional provisions, of a saving or transitional nature consequent on the enactment of the principal Act by this Act.
- 5 (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or a later day.
- 10 (3) To the extent that a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a construction worker by decreasing a right that existed immediately before that date of publication in the Gazette.