

**Authorised Version No. 013**  
**Construction Industry Long Service Leave**  
**Act 1997**

**No. 53 of 1997**

Authorised Version incorporating amendments as at  
17 November 2011

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Authorised Version incorporating amendments as at  
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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to repeal the **Construction Industry Long Service Leave Act 1983** and provide for the scheme established by that Act to be administered in accordance with a trust deed by a company incorporated under the Corporations Law<sup>1</sup>.

**2 Commencement**

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 1998, it comes into operation on that day.

**3 Definitions**

- (1) In this Act—

*commencement day* means the day on which section 20 comes into operation;

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S. 3(1) def. of  
*director*  
amended by  
No. 44/2001  
s. 3(Sch.  
item 23).

*director*, in relation to a corporation, has the same meaning as in section 9 of the Corporations Act;

*existing staff member* means a person who, immediately before the commencement day—

- (a) was an officer or employee under the **Public Sector Management Act 1992** assisting the former Board in the administration of the former Act; or
- (b) was employed by the former Board;

*former Act* means the **Construction Industry Long Service Leave Act 1983** as in force immediately before its repeal;

*former Board* means the Construction Industry Long Service Leave Board established under Part II of the former Act;

*former fund* means the Construction Industry Long Service Leave Fund established under section 9 of the former Act;

*fund* means the Construction Industry Long Service Leave Fund established under the trust deed;

*person* includes an unincorporated body and a partnership;

*trust deed* means the trust deed executed by CoINVEST Limited A.C.N. 078 004 985 as trustee on 1 April 1997 as amended and in force for the time being;

*trustee* means CoINVEST Limited A.C.N. 078 004 985 or any new trustee appointed under, and in accordance with, the trust deed.

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- (2) Words and expressions used in the rules set out in Schedule 2 to the trust deed and in this Act have the same respective meanings in this Act as they have in those rules as amended and in force for the time being.
- (3) Subsection (2) does not apply to the extent that the context or subject-matter otherwise indicates or requires.
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**PART 2—CONSTRUCTION INDUSTRY LONG SERVICE  
LEAVE FUND**

**4 Long service leave charges**

S. 4(1)  
substituted by  
No. 90/2004  
s. 4(1).

(1) An employer must pay to the trustee a long service leave charge in respect of every worker employed by the employer to perform construction work in the construction industry.

S. 4(1A)  
inserted by  
No. 90/2004  
s. 4(1).

(1A) A working sub-contractor (who has made an election referred to in subsection (4)) must pay to the trustee a long service leave charge in respect of construction work performed by the working sub-contractor in the construction industry.

(2) The date by which a long service leave charge is payable, the period in respect of which it is payable, the amount of charge payable and the method by which that amount is to be calculated are as determined from time to time by the trustee in accordance with the trust deed.

(3) The long service leave charge imposed on an employer in respect of a worker must not be more than 3% of the ordinary pay of the worker.

S. 4(4)  
amended by  
No. 90/2004  
s. 4(2).

(4) The trust deed must permit a working sub-contractor to elect to pay a long service leave charge in respect of construction work performed by the working sub-contractor in the construction industry and to revoke that election at any time.

(5) The trust deed may provide for long service leave charges to be payable at different rates in respect of—

(a) workers and working sub-contractors;

S. 4(5)(b)  
amended by  
No. 90/2004  
s. 4(3).

(b) different classes of construction work performed by workers or working sub-contractors in the construction industry.

## 5 Recovery of charges

- (1) The trustee may recover any amount of long service leave charge owing to the trustee by an employer or working sub-contractor, together with interest in accordance with subsection (2), as a debt in any court of competent jurisdiction.
- (1A) The trustee may recover an amount referred to in subsection (1) from a related body corporate (within the meaning of the Corporations Act) of an employer or working sub-contractor.
- (2) Interest at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** is payable on any amount owing to the trustee calculated from the date on which the amount becomes due until the date on which the amount is paid or otherwise recovered under subsection (1).

S. 5(1A)  
inserted by  
No. 90/2004  
s. 5.

## 6 Entitlements

- (1) Every worker is entitled to long service leave, and to be paid benefits out of the fund, in respect of continuous service in the construction industry.
- (2) Every working sub-contractor who has paid long service leave charges is entitled to be paid benefits out of the fund in respect of continuous service in the construction industry.
- (3) The amount of the entitlement and the method by which that amount is to be calculated are as determined from time to time by the trustee in accordance with the trust deed.

## 7 Restriction on powers of trustee

- (1) The trustee must not, without the prior approval of the Governor in Council, exercise any power, authority or discretion given to the trustee by the trust deed the exercise of which would have the effect of enlarging the class of persons capable of being paid benefits out of the fund.

(2) Without limiting subsection (1), that subsection—

- (a) has effect with respect to any addition to, or any amendment, modification, variation, deletion, revocation, substitution or replacement of, the whole or any part of the trust deed by which—
  - (i) the meaning or scope of the expressions "construction work" or "construction industry" is enlarged, whether directly or indirectly; or
  - (ii) an award is prescribed for the purposes of the fund;
- (b) does not have effect with respect to a decision as to whether or not a particular person is within a class of persons then capable of being paid benefits out of the fund (whether as a result of an amendment of a prescribed award or otherwise) or as to the amount of any benefit to which such a person is entitled;
- (c) does not have effect with respect to a decision as to the amount of any benefit capable of being paid out of the fund.

S. 7(2)(b)  
amended by  
No. 90/2004  
s. 6(1).

S. 7(2)(c)  
inserted by  
No. 90/2004  
s. 6(2).

## 8 Registers

(1) An employer whose name is not included in the register of employers or the register of working sub-contractors kept by the trustee in accordance with the trust deed must not for more than 5 days in any month—

- (a) employ workers under a contract of employment to perform construction work in the construction industry; or

S. 8(1)(a)  
amended by  
No. 90/2004  
s. 7(1).

(b) being a principal contractor, engage any other employer or working sub-contractor by contract (not being a contract of employment) to perform construction work in the construction industry.

S. 8(1)(b)  
amended by  
No. 90/2004  
s. 7(2).

Penalty: 20 penalty units.

(2) A working sub-contractor whose name is not included in the register of working sub-contractors kept by the trustee in accordance with the trust deed must not, for more than 5 days in any month, perform construction work as a working sub-contractor in the construction industry.

S. 8(2)  
amended by  
No. 90/2004  
s. 7(3).

Penalty: 20 penalty units.

(3) A worker whose name is not included in the register of workers kept by the trustee in accordance with the trust deed must not, for more than 5 days in any month, perform construction work as a worker in the construction industry.

S. 8(3)  
amended by  
No. 90/2004  
s. 7(4).

Penalty: 20 penalty units.

## 9 Requirement to keep records and make returns

(1) An employer must—

(a) in accordance with the trust deed, keep records containing information relating to workers employed to perform construction work in the construction industry;

S. 9(1)(a)  
amended by  
No. 90/2004  
s. 8(1).

(b) retain any such record for at least 7 years after the last entry was made in it;

(c) in accordance with the trust deed, send to the trustee from time to time information relating to workers employed to perform construction work in the construction industry.

S. 9(1)(c)  
amended by  
No. 90/2004  
s. 8(2).

Penalty: 20 penalty units.

- (2) An employer must not make any false or misleading statement in, or any material omission from, any record that the employer is required by subsection (1)(a) to keep.

Penalty: 20 penalty units.

- (3) In a proceeding for an offence against subsection (2) it is a defence to the charge for the accused to prove that the statement or omission resulted from an error made in good faith.

#### **10 Trustee may request information**

- (1) The trustee may, by notice in writing given to an employer or a working sub-contractor or any person whom the trustee believes to be an employer or a working sub-contractor, require that person—

- (a) to give any information to the trustee; or  
(b) to produce to the trustee any document under that person's control—

that is relevant to the ascertainment by the trustee of that or any other person's rights or liabilities under the trust deed.

- (2) A notice under subsection (1) must specify—  
(a) the time or times, not sooner than 28 days after the date of the notice, at which; and  
(b) the form and manner in which—

the information is to be given or the document produced.

- (3) A person to whom a notice is given under subsection (1) must not—  
(a) refuse or fail to comply with the notice; or

(b) in response to the notice give information that is false or misleading in a material particular.

Penalty: 20 penalty units.

- (4) A person is not excused from complying with a notice under subsection (1) on the ground that compliance might tend to incriminate the person but, if the person in writing given to the trustee before complying with the notice, claims that compliance might tend to incriminate the person, any information given or document produced by the person in compliance with the notice is not admissible in evidence against the person in criminal proceedings, other than proceedings under this Act or other proceedings in respect of the falsity of the information or document.
- (5) In a proceeding for an offence against subsection (3)(b) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—
- (a) in the case of false information—that the information was true; or
  - (b) in the case of misleading information—that the information was not misleading.

## **11 Enforcement of information request**

- (1) Irrespective of whether a proceeding is commenced for an offence against section 10(3)(a), the trustee may apply to the Magistrates' Court for an order directing a person to whom a notice was given under section 10(1) to comply with the notice within a specified time.
- (2) On an application under subsection (1) the Magistrates' Court must, if it considers that there are reasonable grounds for believing that the person has refused or failed to comply with the

**s. 11A**

notice, grant the application unless it considers that in the circumstances there are reasonable grounds for not doing so.

- (3) In the application of section 135 of the **Magistrates' Court Act 1989** to an order under this section—
- (a) subsection (3)(a) of section 135 has effect as if it provided for a fine of not more than 10 penalty units for every day during which the default continues; and
  - (b) subsection (4)(b) of section 135 has effect as if it provided for maximum aggregate sums of 400 penalty units.

S. 11A  
inserted by  
No. 90/2004  
s. 9.

**11A Authorised employee may represent trustee in proceeding**

Despite anything to the contrary in any other Act, if the trustee is a party to a proceeding—

- (a) for the recovery of long service leave charges under section 5; or
- (b) for an offence against section 10(3)(a)—

the trustee may appear in the proceeding by an employee of the trustee authorised by the trustee to do so.

**12 Disputes**

- (1) Any of the following disputes (to the extent to which it involves issues that are not the subject of or have not been determined in a proceeding for an offence against this Act) is a dispute for the purposes of this section—
- (a) a dispute about whether a person is an employer who employs or engages a person or persons to perform construction work in the construction industry between—
    - (i) that person and the trustee; or

S. 12(1)(a)  
amended by  
No. 90/2004  
s. 10(1).

- (ii) that person and a person or persons employed or engaged by that person; or
    - (iii) a person or persons employed or engaged by that person and the trustee;
  - (b) a dispute about whether a person is employed or engaged to perform construction work in the construction industry between—
    - (i) that person and an employer; or
    - (ii) that person and the trustee; or
    - (iii) an employer and the trustee;
  - (c) any other dispute concerning the scheme dealt with by the trust deed between—
    - (i) an employer and a person or persons employed or engaged by the employer; or
    - (ii) any person referred to in subparagraph (i) and the trustee; or
    - (iii) a working sub-contractor and the trustee.
- (2) If a dispute is not settled, the parties to the dispute must be taken to have entered into an agreement in writing to refer the dispute to arbitration in accordance with the **Commercial Arbitration Act 2011** before a sole arbitrator appointed by the Secretary-General for the time being of the Australian Centre for International Commercial Arbitration.
- (3) Unless the arbitrator otherwise directs, the costs of the arbitration shall be borne equally by the parties to the dispute.

S. 12(1)(b)  
amended by  
No. 90/2004  
s. 10(2).

S. 12(2)  
amended by  
No. 50/2011  
s. 46(Sch.  
item 3).

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**13 Contracting out prohibited**

Except as is otherwise expressly provided by this Act or the trust deed, any term of an agreement purporting to exclude, limit or modify the operation of this Act or the trust deed is void.

**14 Rule against perpetuities**

Without limiting section 17 of the **Perpetuities and Accumulations Act 1968**, the rule of law known as the rule against perpetuities does not apply to the fund and must be deemed never to have applied to the former fund.

**14A Extension of application to certain workers and working sub-contractors**

In this Part a reference to a worker or working sub-contractor includes a reference to a person entitled to long service leave and to be paid benefits out of the fund in accordance with rule 31A or rule 31B in Schedule 2 to the trust deed.

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S. 14A  
inserted by  
No. 90/2004  
s. 11.

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**PART 3—MISCELLANEOUS**

**15 Extension of period for filing charges**

Despite anything to the contrary in any other Act, a charge for an offence against this Act may be filed at any time within 5 years after the commission of the alleged offence.

**15A Service of documents**

**S. 15A  
inserted by  
No. 90/2004  
s. 12.**

A notice or other document to be served on or given to a person under this Act must be served or given—

- (a) by delivering it personally to the person; or
- (b) by leaving it at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing or employed at that place; or
- (c) by sending it to the person by registered post addressed to the person's usual or last known place of residence; or
- (d) if the person is a corporation—
  - (i) by sending it by registered post to the registered office in Victoria of the corporation; or
  - (ii) by giving it to a person who is an officer of the corporation who is authorised to accept service of notices and who is employed at the registered office of the corporation.

S. 16(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 26).

## 16 General provisions as to proceedings for offences

The following provisions have effect with respect to proceedings for offences against this Act—

- (a) the onus of proof that the person named in a charge as an employee of the accused was not employed as alleged in that charge is on the accused;
- (b) it is not a defence that an employer was not in Victoria at the time the alleged offence was committed.

## 17 Offences by corporations and partnerships etc.

- (1) If a corporation contravenes a provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.
- (4) If in a proceeding for an offence against this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (5) If this Act provides that a person is guilty of an offence, that reference to a person must—
  - (a) if the person is a partnership, be read as a reference to each member of the partnership; and

- (b) if the person is an unincorporated association, be read as a reference to each member of the committee of management of the association.

## 18 Reciprocal arrangements

- (1) The Minister may make a reciprocal arrangement with a Minister responsible for the administration of a corresponding law in any other State or Territory of the Commonwealth.
- (2) A reciprocal arrangement may relate to long service leave payments, the exchange of information about service credits and entitlements to long service payments between the trustee and any corresponding body under a corresponding law and any other matters relating to long service leave payments which the Minister thinks are necessary or convenient.
- (3) If—
- (a) a person has been paid a long service leave payment by a corresponding body under a corresponding law; and
  - (b) the payment is either wholly or partly in respect of a period of service in the construction industry in Victoria; and
  - (c) the Minister has entered into a reciprocal arrangement with the Minister responsible for administering that corresponding law—
- the trustee must pay to the corresponding body the amount specified in the reciprocal arrangement.
- (4) A repayment by the trustee under subsection (3) is subject to any terms and conditions that are specified in the reciprocal arrangement.

S. 18(3)  
amended by  
No. 90/2004  
s. 13.

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- (5) If a reciprocal arrangement has been made, this Act and the trust deed are to be construed as applying with any modifications that are necessary to give effect to the terms of the reciprocal arrangement.
- (6) In this section *corresponding law*, in relation to a State or Territory of the Commonwealth other than Victoria, means a law of that State or Territory that—
- (a) provides for long service leave payments to persons employed in the construction industry that are the same as, or are similar to, the payments provided for by this Act and the trust deed; and
  - (b) is specified by the Minister by notice published in the Government Gazette as a corresponding law for the purposes of this section.

### **19 Transitional reciprocal arrangements**

- (1) A reciprocal arrangement made under section 46A of the former Act in force immediately before the commencement day continues in force on and after that day according to its tenor but with the modification that, in its application to Victoria, the trustee is bound by it in place of the former Board and has all the rights, liabilities, duties and obligations of the former Board under that arrangement.
- (2) The laws listed in Schedule 3 to the Construction Industry Long Service Leave Regulations 1993 as in force immediately before the commencement day are, until a notice is published by the Minister under section 18(6)(b), deemed to be corresponding laws for the purposes of section 18.

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**20 Repeal of Construction Industry Long Service Leave Act 1983**

The **Construction Industry Long Service Leave Act 1983** is repealed.

No. 9935.  
Reprinted to  
No. 100/1995.  
Subsequently  
amended by  
No. 59/1996.

**21 Annual report**

The trustee must prepare and submit the report of operations and financial statements of the former Board for its final financial year in accordance with Part 7 of the **Financial Management Act 1994**.

**22 Transitional provisions (working sub-contractors)**

- (1) A working sub-contractor to whom Parts V and VI of the former Act applied immediately before the commencement day is deemed to have made an election referred to in section 4(4) of this Act.
- (2) An election deemed to have been made by force of subsection (1) may be revoked by the working sub-contractor in accordance with the trust deed.

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**PART 4—PROPERTY TRANSFER AND STAFF  
SUPERANNUATION**

**Division 1—Preliminary**

**23 Definitions**

(1) In this Part—

***complying superannuation fund*** means a superannuation entity or a superannuation fund within the meaning of section 10 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth which is a complying superannuation fund or a complying approved deposit fund within the meaning of the Income Tax Assessment Act 1936 of the Commonwealth;

***former Board instrument*** means an instrument (including a legislative instrument other than this Act and the former Act and regulations under that Act) or an oral agreement subsisting immediately before the appropriate relevant date—

- (a) to which the former Board was a party;  
or
- (b) that was given to or in favour of the former Board; or
- (c) that refers to the former Board; or
- (d) under which—
  - (i) money is, or may become, payable to or by the former Board; or
  - (ii) other property is to be, or may become liable to be, transferred to or by the former Board;

**former Board property** means property, rights or liabilities of the former Board that, under this Part, have vested in, or become liabilities of, the trustee or the State;

**liabilities** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

**relevant date**—

- (a) in relation to property, rights or liabilities of the former Board that are transferred to the trustee under Division 2, means the commencement day;
- (b) in relation to an allocation statement under Division 3 or property, rights or liabilities allocated under such a statement, means the date fixed by the Minister under subsection (2) for the purposes of that statement;

**rights** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**transferee**, in relation to former Board property, means the trustee or the State, as the case requires, to which the property has been transferred under this Part.

- (2) The Minister may, by notice published in the Government Gazette, fix a date before the commencement day as the relevant date for the purposes of an allocation statement under Division 3.

## **24 Directions**

- (1) The Minister may give to the former Board any written direction that he or she thinks fit in connection with the winding-up of the former Board and the transfer of its property, rights and liabilities.
- (2) The former Board must comply with a direction given under this section.

### **Division 2—Property transfer by operation of Act**

## **25 Trustee to be successor in law of former Board**

On the commencement day—

- (a) the former Board is abolished and its members and any deputy members go out of office;
- (b) all property and rights that, immediately before that day, were vested in the former Board are, by force of this section, vested in the trustee;
- (c) all liabilities of the former Board existing immediately before that day become, by force of this section, liabilities of the trustee;
- (d) subject to section 34, the trustee is, by force of this section, substituted as a party to any proceeding pending in any court or tribunal to which the former Board was a party immediately before that day;
- (e) subject to section 32, the trustee is, by force of this section, substituted as a party to any arrangement or contract entered into by or on behalf of the former Board as a party and in force immediately before that day;

- (f) any reference to the former Board in any Act (other than this Act) or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** must, so far as it relates to any period occurring on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the trustee.

## **26 Construction Industry Long Service Leave Fund**

On the commencement day the former fund is abolished and all money forming part of it immediately before that day forms part of the fund on and from that day and may be dealt with in accordance with the trust deed.

### **Division 3—Property transfer by allocation before commencement day**

## **27 Minister may direct transfer of property**

- (1) The Minister may give a direction in writing to the former Board directing it to transfer, in accordance with the direction, property, rights or liabilities of a specified kind to the State.
- (2) Within 21 days after receiving a direction under subsection (1), the former Board must give to the Minister a statement approved by the Minister relating to the property, rights and liabilities of the former Board to which the direction relates, as at a date specified by the Minister for the purposes of this section.
- (3) A statement under this section—
  - (a) must allocate the property, rights and liabilities of the former Board shown in the statement in accordance with the directions of the Minister; and

- (b) must be signed by the chief executive officer of the former Board.
- (4) If a statement under this section is approved by the Minister—
  - (a) the Minister must sign the statement; and
  - (b) the statement is an allocation statement for the purposes of this Part.
- (5) The Minister may at any time direct the former Board to amend a statement given to him or her under this section as specified in the direction.
- (6) An allocation statement under this section may be amended by writing signed by the Minister.
- (7) In this section, *statement* and *allocation statement* include a statement or allocation statement amended in accordance with this section.

## **28 Property transferred in accordance with direction**

On the relevant date—

- (a) all property and rights of the former Board, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 27, vest in the State in accordance with the statement; and
- (b) all liabilities of the former Board, wherever located, that are allocated under an allocation statement become liabilities of the State in accordance with the statement.

## **29 Allocation of property etc. subject to encumbrances**

Unless an allocation statement under this Division otherwise provides, where, under this Division—

- (a) property and rights vest in; or

- 
- (b) liabilities become liabilities of—  
the State in accordance with a direction under  
section 27—
- (c) the property and rights so vested are subject  
to the encumbrances (if any) to which they  
were subject immediately before so vesting;  
and
- (d) the rights to which the former Board was  
entitled in respect of those liabilities  
immediately before they ceased to be  
liabilities of the former Board vest in the  
State.

#### **Division 4—Staff superannuation**

### **30 Superannuation**

- (1) An existing staff member who accepts an offer of  
employment made by the trustee may elect, no  
later than 2 months after the commencement day,  
to transfer the transfer amount to a complying  
superannuation fund.
- (2) The transfer amount and the terms and conditions  
that apply in respect of the transfer are to be  
determined by the Minister administering the  
**State Superannuation Act 1988**.
- (3) The Victorian Superannuation Board must pay out  
of the State Superannuation Fund to the relevant  
complying superannuation fund the transfer  
amount less any tax required to be paid under the  
Income Tax Assessment Act 1936 of the  
Commonwealth.

- (4) If an existing staff member who accepts an offer of employment made by the trustee—
- (a) elects not to transfer a transfer amount to a complying superannuation fund under subsection (1); or
  - (b) fails to make an election in accordance with subsection (1)—

the existing staff member is deemed, for the purposes of the **State Superannuation Act 1988**, to have resigned from his or her employment with an employing authority within the meaning of that Act on the expiry of the period of 2 months beginning on the commencement day.

- (5) For the purposes of the **Superannuation (Portability) Act 1989**, an existing staff member to whom subsection (4) applies is entitled by virtue of this section to elect to make an application in accordance with section 5 of that Act.

#### **Division 5—General**

#### **31 Value to State of former Board property**

The value to the State as at the relevant date of property, rights and liabilities of the former Board that are allocated to it under an allocation statement is the value shown in, or calculated in accordance with, the relevant allocation statement.

#### **32 Substitution of party to agreement**

Where, under an allocation statement, the rights and liabilities of the former Board under an agreement vest in or are allocated to the State in accordance with a direction under section 27—

- (a) the State becomes, on the relevant date, a party to the agreement in place of the former Board; and

- (b) on and after the relevant date, the agreement has effect as if the State had always been a party to the agreement.

### 33 Former Board instruments

Each former Board instrument relating to former Board property continues to have effect according to its tenor on and after the relevant date in relation to the transfer of that property as if a reference in the instrument to the former Board were a reference to the transferee.

### 34 Proceedings

If, immediately before the relevant date, proceedings relating to former Board property (including arbitration proceedings) to which the former Board was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for the former Board as a party to the proceedings and has the same rights in the proceedings as the former Board had.

### 35 Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law if, immediately before the relevant date, the former Board is, in relation to former Board property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as the former Board had.

s. 36

### 36 Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or other instrument, must make any amendments in the Register that are necessary because of the operation of this Part.

S. 36(2)  
repealed by  
No. 85/1998  
s. 24(Sch.  
item 13).

\* \* \* \* \*

### 37 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of the former Board.

### 38 Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of the former Board in relation to former Board property if this Part had not been enacted is admissible for or against the interests of the transferee.
- (2) The **Evidence Act 2008** applies with respect to the books of account of the former Board and to entries made in those books of account before the relevant date, whether or not they relate to former Board property, as if those books of account and entries were business records.

S. 38(2)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 10.1).

\* \* \* \* \*

S. 38(3)  
repealed by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 10.2).

### **39 Re-structuring costs**

- (1) The Minister may, by notice in writing served on the trustee, require it to pay a specified amount to the State in respect of the costs incurred by the State in connection with the winding-up of the former Board and the transfer of its property, rights and liabilities.
- (2) The trustee must, within the period specified in the notice, pay the specified amount out of the fund to the Minister for payment into the Consolidated Fund.
- (3) An amount payable under this section may be recovered in a court of competent jurisdiction as a debt due to the State.

### **40 Validity of things done under this Part**

Nothing effected or to be effected by this Part or done or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or

- (d) is to be regarded as giving rise to any remedy for a party to a contract, instrument or oral agreement or as causing or permitting the termination of any contract, instrument or oral agreement because of a change in the beneficial or legal ownership of any asset, right or liability; or
  - (e) is to be regarded as causing any contract, instrument or oral agreement to be void or otherwise unenforceable; or
  - (f) is to be regarded as frustrating any contract; or
  - (g) releases any surety or other obligee wholly or in part from any obligation.
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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 23 April 1997*

*Legislative Council: 8 October 1997*

The long title for the Bill for this Act was "to repeal the **Construction Industry Long Service Leave Act 1983** and provide for the scheme established by that Act to be administered in accordance with a trust deed by a company incorporated under the Corporations Law and for other purposes."

The **Construction Industry Long Service Leave Act 1997** was assented to on 21 October 1997 and came into operation as follows:

Part 1 on 21 October 1997: section 2(1); rest of Act on 1 December 1997:  
Government Gazette 20 November 1997 page 3169.

Construction Industry Long Service Leave Act 1997  
No. 53 of 1997

Endnotes

## 2. Table of Amendments

This Version incorporates amendments made to the **Construction Industry Long Service Leave Act 1997** by Acts and subordinate instruments.

### **Transfer of Land (Single Register) Act 1998, No. 85/1998**

*Assent Date:* 17.11.98  
*Commencement Date:* S. 24(Sch. item 13) on 1.1.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Construction Industry Long Service Leave Act 1997**

### **Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 23) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Construction Industry Long Service Leave Act 1997**

### **Construction Industry Long Service Leave (Amendment) Act 2004, No. 90/2004**

*Assent Date:* 7.12.04  
*Commencement Date:* 1.3.05: Government Gazette 24.2.05 p. 319  
*Current State:* All of Act in operation

### **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 26) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Construction Industry Long Service Leave Act 1997**

### **Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 10) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Construction Industry Long Service Leave Act 1997**

### **Commercial Arbitration Act 2011, No. 50/2011**

*Assent Date:* 18.10.11  
*Commencement Date:* S. 46(Sch. item 3) on 17.11.11: Special Gazette (No. 369) 15.11.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Construction Industry Long Service Leave Act 1997**

### 3. Explanatory Details

<sup>1</sup> S. 1: See regulation 5 of the Corporations (Ancillary Provisions) Regulations 2011, S.R. No. 34/2011.