

# Construction Industry Long Service Leave Bill

## EXPLANATORY MEMORANDUM

The purpose of this Bill is to change the structure for administering the Construction Industry Long Service Leave scheme.

The **Construction Industry Long Service Leave Act 1983** established a long service leave scheme for the provision of portable long service leave benefits for workers and (on an optional basis) sub-contractors in the construction industry. All employers in the construction industry, and participating sub-contractors are required to make contributions to the Construction Industry Long Service Leave Fund, which is administered by the Construction Industry Long Service Leave Board (trading as CoINVEST), a statutory corporation.

The Bill repeals the 1983 legislation and transfers administration of the Scheme to CoINVEST Limited, a company limited by guarantee ('trustee'). It will administer the Scheme in accordance with a trust deed and rules. The existing fund is to be abolished and its proceeds transferred to a new fund held pursuant to the trust deed.

The Bill provides for the transfer of property from the Construction Industry Long Service Leave Board to the trustee and also imposes certain mandatory obligations which cannot be effectively dealt with in the trust deed or the memorandum and articles of association of the trustee.

### PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Act.
- Clause 2 specifies the commencement of the Act.
- Clause 3 contains definitions.

### PART 2—CONSTRUCTION INDUSTRY LONG SERVICE LEAVE FUND

- Clause 4 authorises the trustee to levy long service leave charges on employers and participating working sub-contractors in accordance with the trust deed.
- Clause 5 provides that the trustee may recover charges as a debt.
- Clause 6 confers a right on workers to long service leave, and on workers and participating working sub-contractors, to be paid benefits in accordance with the trust deed.

- Clause 7 requires that the trustee cannot enlarge the class of persons to be paid benefits out of the fund, without the prior approval of Governor in Council.
- Clause 8 creates certain offences concerning employment by unregistered employers, working sub-contractors and workers.
- Clause 9 requires an employer to keep record information and to provide information in accordance with the trust deed.
- Clause 10 enables the trustee to require information or documents from an employer or working sub-contractor.
- Clause 11 provides for the enforcement of requests for information by order of the Magistrates' Court.
- Clause 12 provides for the resolution of disputes by arbitration.
- Clause 13 prohibits the exclusion of the Act or the trust deed by an agreement.
- Clause 14 provides that the rule against perpetuities does not apply to the fund established under the trust deed.

### **PART 3—MISCELLANEOUS**

- Clause 15 provides that a charge for an offence against the Act may be filed at any time within 5 years after the commission of the alleged offence.
- Clause 16 contains general provisions concerning proceedings for offences.
- Clause 17 provides that directors and certain managers of corporations who contravene a provision of the Act are personally liable.
- Clause 18 enables the Minister to make reciprocal arrangements with a Minister responsible for the administration of a corresponding law of another State or Territory and requires the trustee to give effect to such reciprocal arrangements.
- Clause 19 continues previous reciprocal arrangements entered into under section 46A of the 1983 legislation.
- Clause 20 repeals the **Construction Industry Long Service Leave Act 1983**.
- Clause 21 requires the trustee to prepare and submit a report of operations and financial statements of the former Board.

Clause 22 deems certain working sub-contractors to have made an election under section 4(4) of the Act.

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

Clause 23 contains definitions for Part 4.

Clause 24 enables the Minister to give the former Board written directions and requires the Board to comply with a direction.

Clause 25 provides that on the commencement day the former Board is abolished and all its property and liabilities transfer to the trustee.

Clause 26 provides for the abolition of the former Fund administered by the Board and for the transfer of its money to the fund administered by the trustee in accordance with the trust deed.

Clause 27 enables the Minister to give a direction to the former Board directing it to transfer property, rights or liabilities of a specified kind to the State and requiring the former Board to give the Minister a statement relating to the property, rights and liabilities of the former Board to which the direction relates.

Clause 28 provides for the transfer, on the relevant date, of all property, rights and liabilities of the former Board in accordance with the allocation statement.

Clause 29 provides that unless otherwise provided, the property, rights and liabilities which transfer to the State in accordance with a direction under section 27 vest in the State subject to any existing encumbrances or rights.

Clause 30 enables an existing staff member who accepts an offer of employment made by the trustee to elect to transfer the transfer amount to a complying superannuation fund and also entitles the existing staff to make an election in accordance with section 5 of the **Superannuation (Portability) Act 1989**.

Clause 31 prescribes the value to the State of former Board property as at the relevant date.

Clause 32 substitutes the State for the former Board as a party to an agreement whose rights or liabilities have become vested in the State.

Clause 33 provides that each former Board instrument relating to former Board property continues to have effect on and after the relevant date in relation to the transfer of that property as if the reference in the instrument to the former Board were a reference to the transferee.

- Clause 34 provides for the substitution of the transferee for the former Board in relation to certain proceedings.
- Clause 35 provides that if, immediately before the relevant date, the former Board is the registered proprietor of an interest in land then on or after that date the transferee is taken to be the registered proprietor and has the same rights and remedies in respect of that interest as the former Board had.
- Clause 36 requires the Registrar of Titles, on request, to amend the Register and requires the Registrar-General to make necessary entries on the records of enrolment of any Crown grant and on any memorial relating to land.
- Clause 37 provides that no stamp duty or other tax is chargeable in respect of anything done under this Part.
- Clause 38 provides for the admissibility of certain documentary evidence.
- Clause 39 enables the Minister to require the trustee 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.
- Clause 40 provides that nothing done under this Part places any person in breach of contract or guilty of a civil wrong or in breach of any other Act or obligation.