



## NEW INDUSTRIAL APPEAL COURT DECISION CLARIFIES THE MEANING OF "SITE" IN THE CONSTRUCTION INDUSTRY PORTABLE LONG SERVICE LEAVE ACT 1985 (WA)

The WA Industrial Appeal Court has clarified the meaning of the phrase “on a site” and the word “site” in the definition of “construction industry” in section 3(1) of the *Construction Industry Portable Paid Long Service Leave Act 1985 (WA)* (“**the Act**”).

The Act makes provision for paid long service leave to employees engaged in the construction industry. This is because of the inherently itinerant nature of the industry, with employees moving from job to job and not remaining in employment with one employer longer enough to qualify for long service leave. The Act enables an employee to transport long service leave credits from employer to employer.

On 12 July 2018, the Construction Industry Long Service Leave Payments Board (“**Board**”) notified Programmed Industrial Maintenance Pty Ltd (“**PIM**”) that it was required to register as an employer under the Act. Registration as an employer carries various obligations, including to render regular payments to the Board in respect of employees.

PIM sought a review of the Board’s decision, contending that its employees engaged in work at established operational locations such as mines and processing plants and as such, its employees could not be classified as engaged in the “construction industry” as the term is ordinarily understood.

The principal issue in the proceedings at first instance was whether PIM’s employees perform work “on a site” for the purposes of the definition of “construction industry” in section 3(1) of the Act.

Chief Commissioner Scott (as she then was), affirmed the Board’s decision to require PIM to register as an employer under the Act. Scott CC rejected PIM’s contention that “on a site” and “on site” means a “building site” or a “construction site”. She held that on its proper construction, the words “on a site” mean at a place at which any of the activities of subparagraphs (a)(i) through to (xviii) of the definition of “construction industry” were being performed.

PIM lodged an appeal against the review decision of Scott CC, to the Full Bench of the WA Industrial Relations Commission (“**WAIRC**”).

On 2 September 2020, the Full Bench of the WAIRC rejected PIM’s appeal for reasons that were largely in alignment to those as provided by Scott CC at first instance.

PIM subsequently pursued a further appeal to the WA Industrial Appeal Court.

The IAC dismissed the appeal and held that the word “site” is not to be read as limited to merely displaying a reference to a construction site or to a building site. It found the true meaning of the phrase “on a site” and the word “site” is a reference to the activities in the preface of subparagraph (a), as they are carried on at the places as identified under (i) to (xviii) in the second limb of subparagraph (a) of the definition of “construction industry”.

The full decision can be read [here](#).

Employers that are unsure about whether they are required to register as an employer under the Act should obtain advice. Failure to register and pay contributions can result in fines and surcharges being applied to amounts owed.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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