

## Electrical Trades Union WA Branch

### Submission

#### for changes to the Construction Industry PLSL Act 1985 – currently under review

##### **Subject 1 – Seeking ‘Commissioning, de-commissioning and testing’ be included in CIPLSL Act 1985 definitions of ‘Construction Work’.**

The ETU WA Branch has many of its members registered with MyLeave as a consequence of their work with their employers, who are deemed by the PLSL Act 1985, to be eligible for the portable long service leave scheme, as working in the ‘construction’ industry.

However, we also have many members denied the opportunity to receive PLSL credits because they are deemed to be working for an electrical contractor involved in ‘commissioning’ work, which is but one facet of being a qualified, licenced electrical tradesperson. This may mean, our members may have existing LSL credits, they then change employer, and suddenly they have no more credits accruing, and eventually, they lose their accrual after the specified Myleave dictated timeframe.

It is now appropriate to advise of further and conflicting information regarding another Act’s definition of ‘construction’. The two Acts operate in the construction industry.

The new **Work Health & Safety Act 2020** and its corresponding Regulations (see below in red) define ‘commissioning’ ‘de-commissioning’ and ‘testing’ as distinct aspects of construction work. As many of our members fall under BOTH Acts simultaneously, it seems incongruous, conflicting, and harmful that the definition of construction work does not align more accurately, especially in relation to Acts.

Work Health and Safety (General) Regulations 2022 Preliminary Part 6.1 r. 289 (on page 319 of PDF reader)

##### **Chapter 6 - Construction work**

Part 6.1 - Section 289. Meaning of construction work (1) In this Chapter— construction work means any work carried out in connection with the construction, alteration, conversion, fitting-out, **commissioning**, renovation, repair, maintenance, refurbishment, demolition, **de-commissioning** or dismantling of a structure. (2) Without limiting subregulation (1), construction work includes the following - (a) any installation or **testing** carried out in connection with an activity referred to in subregulation (1);

An example the ETU wishes to draw into this review of the PLSL Act, is the Albemarle Kemerton Lithium Hydroxide Plant Project in the Kemerton Industrial Estate near Bunbury, WA. This project has been underway since 2019 for the first two trains. The construction, in terms of electrical works, involved numerous electrical contractors, some specialising in High Voltage works and commissioning. Some electrical workers moved from one contractor to another over the duration of the project (meaning loss of PLSL accruals), and until recently, there were mainly ‘commissioning’ trades finalising Trains 1&2 prior to full handover to Albemarle for operations to properly and safely begin. Much commissioning activity began during 2021, and formed a natural progression, of what the ETU sees as construction work. A plant can NOT become operational for the client until ALL construction works are complete, including the various stages of commissioning works.

Another point to note is, that even in the earlier stages of the project's construction, once cable ladder, conduits and switchboards have been installed and cables run, electricians would have already megger tested cables (and recorded results) prior to pulling in, and then, once cables are in place and terminated at both ends, other electrical 'testing' can, and is performed, such as ITR's (inspection test records/reports), point to point, polarity checks, megger testing, injection and function testing and the like. This is often referred to as 'pre-commissioning' or 'commissioning' amongst trade-based peers.

This can also occur on operational plants, where shutdowns, maintenance and upgrades occur, and it only depends on the scope of works required from the client, and the age and condition of the plant and its equipment.

Our point is this; At the civils stage of a project, which is essentially earthworks and site preparation, this is designated construction.

Following the civils phase, we go to the SMP – structural, mechanical, piping, whereby steel is erected, vessels and modules are installed and mechanical/electrical installation gets more fully underway. This will continue until all components are installed including piping and electrical component installation, including end to end connection. This will include some forms of testing and commissioning, and during this time, is also designated construction.

The final 'construction' phase is the in-depth commissioning of both mechanical, electrical and instrumentation components, so that final or area specific handover to the client can take place, and is when, on full completion and signed off, the project becomes an operational plant according to the standards and tests undertaken as stipulated. Site construction, signage, induction and Work Health & Safety rules and any awarded site allowances, apply until such handover is made in most, if not all, cases.

Without ALL of these 'construction' phases completed, can a project ever be considered fully operational.

The ETU sees the non-inclusion of 'commissioning' as a fundamental travesty, and seeks that the Review considers and recommends its inclusion as an element of 'Construction work' accordingly.

## **Subject 2 – Seeking reconsideration/changes on how yearly accrual of LSL credits is made (220 days)**

Currently, the yearly maximum LSL credit accrual is 220 days, calculated on only ordinary hours worked, usually Monday-Friday, meaning overtime/penalty rate worked hours are not included. Weekends can only be included if it forms part of a normal work cycle and penalty rates do not apply (Flat rates only). With this stipulation, most construction workers working a FIFO/DIDO roster of 8/6, 7/7 days on/off, or 3/1, 2/1 weeks on/off, who have penalty rates applying to overtime hours and on weekends, are denied any chance of gaining a full years' accrual of 220 days, despite working long hours on their on-swing. The subsequent outcome sees workers who sacrifice time away from home, (and possibly working longer hours overall per annum) effectively discriminated against in gaining their full yearly LSL credits, meaning they must work even longer to gain the maximum yearly credit, see calculations below;

Regarding FIFO/DIDO construction workers missing out on PLSL accruals, the following calculations are based on common roster arrangements currently seen in place all around WA in the sectors that fall under the PLSL Act.

Please bear in mind that these calculations assume continuous work under these roster arrangements and do not account for the typical down time of “off” period between jobs that some in the construction sector experience around fatigue management, usually a half or full day off in camp resting.

### **2/1 roster (1 swing)**

A worker on this roster works 14 days on with 7 off. This equates to a total of 17.33 swings per year and 242.6 actual days worked.

Despite this, a worker on this roster only receives a maximum of 10 days PLSL accrual per swing or 173.3 days per year.

On a 2/1 roster a worker needs to work for 8.88 years to attain the 7-year 1540-day service accrual as other workers.

On this roster it works out as an extra 98.27 weeks of work or an additional 32.76 swings beyond 7 years.

For the 10-year accrual, 2200 days; a worker would need to work this roster for 12.69 years or an additional 140 weeks totalling 46.8 swings extra.

If this same worker was able to accrue days of service on any day worked, the worker would be able achieve the same PLSL days of service as other workers in 6.35 years for 1540-day accrual and 9.07 years for 2200 days.

### **2/2 even time roster (1 swing)**

A worker on this roster works 14 days and has 14 days off. This equates to a total of 13 swings per year and 182 actual days worked.

Despite this, a worker on this roster only receives a maximum of 10 days PLSL accrual per swing or 130 days per year.

On a 2/2 roster a worker needs to work for 11.85 years to attain the same 7-year 1540-day service accrual as other workers.

On this roster it works out as an extra 4.85 years (252.7 weeks) of work or an additional 63.17 swings beyond 7 years

For the 10-year accrual, 2200 days; a worker would need to work this roster for 16.92 years or an additional 360 weeks totalling 90.25 swings extra.

If this same worker was able to accrue days of service on any day worked, the worker would be able achieve the same PLSL days of service as other workers in 8.46 years for 1540-day accrual and 12.09 years for 2200 days.

These workers are often working on isolated work sites in extremes of heat, and often working 12-hour days, including public holidays, weekends and the like.

If amended legislation is to be brought up to date, then it needs to take in to consideration the nuance around rostering arrangements within the construction sector throughout a vast WA. The ETU sees this review as an opportunity to better serve and recognise distant workers’ work contribution, and be properly recognised for PLSL accrual as a result. One recommendation from our membership is that ALL hours worked on a FIFO/DIDO on swing roster, inclusive of overtime, be used in calculations for LSL credits, and that once 220 days has been reached, it caps at that point for that accrual year.

**Subject 3 – Seeking the Hydrocarbons Industry (Upstream) Award 2020 be included as a relevant Award for inclusion in determining Awards used for reference to the ‘construction industry’ with regard to MyLeave and the PLSL Act 1985.**

The ETU has many members working in the onshore and offshore hydrocarbons industry and who perform construction work in this space on all manner of vessels. We support the AWU-MUA (Offshore Alliance) submission for inclusion of this award.

**Subject 4 – Seeking changes to how penalties are applied and progressed via relevant jurisdiction to non-payers/non-registering companies for MyLeave PLSL and dispute resolution.**

The current system of ensuring compliance and any nominated associated penalties/surcharges through ‘relevant competent jurisdictions’ via the MyLeave Board and WAIRC, is not fully clear on any stated/dedicated monetary penalties. See Clauses 34 through to 43 of the CIPPLSL Act 1985.

The ETU sees non-payment by employers of long service leave surcharges to MyLeave on behalf of their eligible employees, as a form of wage theft and penalties should apply to employers in such cases of deliberate non-registration and/or failure to pay ongoing contributions. First offence - \$20,000 AUD and \$1000 per affected employee, second and subsequent offences - \$50,000 and \$2000 per affected employee.

An administrative penalty is to have the offending company struck off from tendering on any State and/or Federal Government funded construction project work.

For dispute resolution; instigate a tripartite committee of employer rep, union rep and independent person with industry experience as an early stage intervention step to seek a fix, prior to issuing and enforcing fines/compliance, and or being struck from Govt funded project tender lists.

**Subject 5 – Seeking enhancement of scope of relevant construction industry stakeholders in the modern construction industry.**

Group Training Organisations (GTO’s) for apprentices, casualised workers and labour hire companies are well embedded into today’s construction industry. Some labour hire companies/GTO’s do not get registered with MyLeave, and consequently, their employees are not in receipt of rightful LSL credits. Ultimately, this is a form of wage theft.

**Subject 6 – Seeking addition of other occupations in construction industry such as drone operators and wind farm – turbine, tower and blade installation specialists, both land and offshore – Renewables, more generally, to be included in definitions of ‘Construction work’.**

Companies that employ workers in these occupations to be included in the MyLeave PLSL scheme. Include these sub-sectors of construction in the definition of ‘construction work’ to capture these workers for eligibility. Wind generation – on and offshore, solar farms, battery storage systems and stand-alone power systems (SAPS).

**Subject 7 – Seeking better terms for eligible Myleave recipients enduring hardship.**

The ETU supports the CFMEU’s submission on this matter.

**Subject 8 – Seeking monthly payments to Myleave by registered employers.**

Three monthly payments give scope for employers who go into liquidation/VA/receivership to avoid paying the MyLeave surcharge for LSL credits for employees. With modern digital accounting technology and AI, monthly payments are possible and a better, safer outcome for recipients of their rightful LSL accruals in a more-timely manner.

**Subject 9 – Seeking continuance of full MyLeave credits during periods while on parental leave, family & domestic violence leave and better payment terms during periods while on workers compensation as known to be in other state/territory PLSL schemes.**

Accruals to be fully credited when on the above periods of leave, that are part of the National Employment Standards, and as mentioned above.

**Subject 10 – Seeking changes to ‘Entitlement to long service leave and pay’ with regard to ‘breaks in service’ at Clause 21 (3) (a) & (b) of the Act (pages 19 and 20)**

Taking the modern construction industry into account and how workers move between industries in the 21<sup>st</sup> Century, in Clause 21 (3) (a) – amend the period of ‘not so engaged of 2 years or more...’ **to 3 years or more...**

With regard to 21 (3) (b) – amend the period of ‘not so engaged of 4 years or more...’ **to 5 years or more...**

**Subject 11 – Seeking that the Shipbuilding/vessel building be included in the CIPLSL Scheme/Act.**

Firstly, the ETU endorses and supports the MUA submission on shipbuilding/vessel building for inclusion and coverage under any amendments to the CIPLSL Act 1985. The ETU also notes the following from its own Union and member perspective;

The ETU has more than 140 current members in the shipbuilding industry out of a current potential 200-250 electrical workers in said industry from time to time (currently). This will only increase over time with the pending Federal Government investment in Defence spending via AUKUS. Many of these workers have previously worked in the currently recognised (By MyLeave and the CIPLSL Act 1985) ‘construction industry’ and are in threat of losing (or already have lost) their PLSL accruals when meeting the current rules on time ‘out of industry’ provisions of the said Act.

Shipbuilding sites have signage at the gates on their sites stating ‘Construction Site’ and the expectations around wearing of PPE and adhering to construction site rules. The shipbuilding construction activities fall within the scope of Australian Standards – “AS/NZS 3012: 2019 - Electrical Installations - Construction and demolition sites”. This means the same electrical installation, testing and maintaining of electrical infrastructure standards must apply on shipbuilding sites as other construction sites. These standards are purely for construction and demolition sites and are fully and lawfully enforceable. As Union Organisers, our lawfully accredited safety right of entry provisions under Section 49i of the (State) Industrial Relations Act 1979, for investigating suspected breaches of said standards, fully apply on shipbuilding construction sites.

**End of ETU WA submission**