

**BUILDING AND CONSTRUCTION INDUSTRY LONG
SERVICE PAYMENTS ACT.**

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 98, 1974.

An Act to make provision for long service payments to workers engaged in the building and construction industry; and for purposes connected therewith.
[Assented to, 13th December, 1974.]

BE

Building and Construction Industry Long Service Payments.

BE it enacted by the Queen's Most Excellent Majesty, by No. 98, 1974
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Building and Short title.
Construction Industry Long Service Payments Act, 1974".
2. This Act shall commence on such day as may be Commence-
appointed by the Governor in respect thereof and as may be ment.
notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–4.

PART II.—THE BUILDING AND CONSTRUCTION
INDUSTRY LONG SERVICE PAYMENTS FUND—ss.
5–9.

PART III.—REGISTER OF WORKERS—ss. 10–13.

PART IV.—RETURNS AND LONG SERVICE CHARGES—
s. 14.

PART V.—ENTITLEMENT TO LONG SERVICE PAYMENT
—ss. 15–19.

PART VI.—BUILDING AND CONSTRUCTION INDUSTRY
COMMITTEE—ss. 20–23.

PART VII.—GENERAL—ss. 24–40.

Building and Construction Industry Long Service Payments.

No. 98, 1974 **4.** (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

Interpre-
tation.

“appointed day” means the day that is one month after the first day of the month next following the commencement of this Act;

“award” means an award within the meaning of the Industrial Arbitration Act, 1940, or the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as amended by any Act of that Parliament, whether passed before or after the commencement of this Act;

“award pay”, in respect of any building and construction work performed by a worker, means the appropriate rate of pay fixed by an award for the performance of that work having regard to the circumstances under which that work was performed;

“Board” means the Builders Licensing Board constituted under the Builders Licensing Act, 1971;

“building and construction industry” means the industry of carrying out the construction, reconstruction, renovation, alteration, demolition or maintenance or repairs of or to any of the following :—

- (a) buildings;
- (b) roadworks, railways, airfields or other works for the carriage of persons, animals or vehicles;
- (c) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or watercourse for the purpose of navigation;
- (d) works for the storage or supply of water or for the irrigation of land;
- (e) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;

(f)

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- (f) bridges, viaducts, aqueducts or tunnels; No. 98, 1974
- (g) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
- (h) pipelines;
- (i) structures, fixtures or works for use in any building or works referred to in paragraphs (a) to (h) inclusive;
- (j) navigational lights, beacons or markers;
- (k) works for the drainage of land;
- (l) works for the storage of liquids, other than water, or of gases;
- (m) works for the transmission of electric power;
- (n) works for the transmission of wireless or telegraphic communications,

and includes pile driving and the preparation of the site for any building or other works referred to in paragraphs (a) to (n) inclusive;

“building and construction work” means work for which a rate of pay is fixed by an award, being work in the building and construction industry performed in New South Wales—

- (a) of the kind usually performed by, or by an apprentice or assistant to, a carpenter, joiner, bricklayer, plasterer, slater, roof-tiler, tilelayer, painter, decorator, bridge and wharf carpenter, stonemason, plumber, gas fitter, asbestos cement fixer, drainer, signwriter or builders’ labourer;
- (b) by a person acting as a foreman, sub-foreman or leading-hand in the supervision of the performance of any work of the kind referred to in paragraph (a); or

(c)

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(c) which, under section 13, has been determined to be building and construction work,

but does not include work which, under section 13, has been determined not to be building and construction work;

“Committee” means the Building and Construction Industry Committee constituted under section 20;

“foundation worker” means a person whose name is entered in the register of workers as the name of a foundation worker;

“Fund” means the Building and Construction Industry Long Service Payments Fund established by section 5;

“ordinary hours”, in relation to any kind of building and construction work, means—

(a) where the award relating to that kind of work provides that ordinary pay is payable for the performance of that kind of work during any hours on any working day specified in the award—those hours; or

(b) where the award relating to that kind of work does not so provide—such hours on any working day as may be determined under section 13 by the Committee in respect of work of that kind;

“register” means the register of workers kept by the Board under section 10;

“registered worker” means a person whose name is entered in the register, whether or not as a foundation worker;

“regulations”

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“regulations” means regulations made under this Act; No. 98, 1974

“worker” means any person who, under a contract of employment, or who, under any other contract, being a contract for labour only or substantially for labour only, performs building and construction work, however he is remunerated, but does not include a person who, under any such contract with any body constituted by any Act or by any Act of the Parliament of the Commonwealth or the council of a city, municipality or shire or a county council, performs, or supervises the performance of, any such work;

“working day” means any day other than a Saturday, Sunday or day that is a public holiday throughout the State and, where any building and construction work is performed in a part of the State on a day that is a public holiday in that part, does not, in relation to that work, include that day.

(2) For the purpose of this Act a person (in this subsection referred to as “the principal employer”) is, in relation to any building and construction work performed by a worker, the employer of that worker if—

- (a) that worker performs that work under a contract of employment with the principal employer;
- (b) that worker performs that work under a contract, not being a contract of employment, for labour only or substantially for labour only with the principal employer; or

(c)

Building and Construction Industry Long Service Payments.

- No. 98, 1974 (c) that worker performs that work under a contract of employment or any other contract, being a contract for labour only or substantially for labour only, and that contract of employment or other contract is with a person (in this paragraph referred to as a "contractor") who is not the principal employer and the work is performed for the principal employer under a contract, not being a contract of employment, with the contractor or any other person.

(3) Nothing in subsection (2) prevents two or more persons each from being the employer of a worker.

(4) For the purpose of this Act, where a person is employed under a contract of employment under which he performs building and construction work—

- (a) he shall be deemed to have performed building and construction work; and
- (b) the employer under that contract shall be deemed to have been his employer,

on any working day on which that person does not perform that work if that person is entitled to be paid by that employer wet weather pay in respect of that day.

PART II.

THE BUILDING AND CONSTRUCTION INDUSTRY
LONG SERVICE PAYMENTS FUND.

Establish-
ment of
Building
and
Construc-
tion
Industry
Long
Service
Payments
Fund.

5. (1) The Board shall establish, administer and control a fund, to be called the "Building and Construction Industry Long Service Payments Fund".

(2)

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(2) There shall be—

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(a) paid into the Fund—

- (i) the long service charges paid under this Act;
- (ii) any moneys borrowed by the Board under this Act;
- (iii) the proceeds of any investments made under section 6; and
- (iv) any other amounts received by the Board in the course of its administration of this Act; and

(b) paid from the Fund—

- (i) the long service payments provided for by this Act;
- (ii) the expenses incurred in the administration of this Act and management of the Fund, as determined by the Treasurer; and
- (iii) any other payments authorised by this Act to be made from the Fund.

6. (1) The provisions of the Superannuation Act, 1916, with respect to the investment of the State Superannuation Fund apply to and in respect of the Board and the investment of the Fund as if the Board and the Fund referred to in those provisions were the Board and the Fund within the meaning of this Act. ^{Power to invest Fund.}

(2) Where pursuant to section 49 of the Builders Licensing Act, 1971, the Board before the commencement of this Act acquired, or after that commencement acquires, by purchase any premises and for the purposes of that acquisition borrowed or borrows moneys under that Act or applied

or

Building and Construction Industry Long Service Payments.

No. 98, 1974 or applies any moneys from the General Fund under that Act, the Board may apply any part of the Fund towards the repayment of the moneys so borrowed or towards recouping the moneys applied from that General Fund.

(3) Where the Board applies any part of the Fund in accordance with subsection (2), the Board shall, subject to any encumbrance to which the premises acquired are subject, from time to time hold those premises and the net income derived from those premises—

(a) as assets in the General Fund under the Builders Licensing Act, 1971, as to an amount that bears to the value of those premises the same proportion as the difference between—

- (i) the purchase price of those premises; and
- (ii) the part of the Fund applied in accordance with subsection (2),

bears to that purchase price; and

(b) as assets in the Fund, as to an amount that bears to the value of those premises, the same proportion as the part of the Fund applied in accordance with subsection (2) bears to that purchase price.

(4) For the purposes of this section—

(a) the reference in subsection (3) to premises acquired by the Board includes a reference to the proceeds of the sale or other disposition of those premises and to any moneys received by the Board in respect of those premises other than net income derived by the Board from those premises;

(b) the reference in subsection (3) to the purchase price of premises acquired by the Board is a reference to such amount as is determined by the Board with the approval of the Treasurer as representing the price paid for those premises and any expenses incurred by the Board in connection with the acquisition; and

(c)

Building and Construction Industry Long Service Payments.

(c) the reference to the net income derived by the Board from premises acquired by the Board includes a reference to—

- (i) such amount as is determined by the Board with the approval of the Treasurer as representing the rental value of any part of the premises occupied for the purposes of administering the Builders Licensing Act, 1971, and the regulations under that Act; and
- (ii) such amount as is determined by the Board with the approval of the Treasurer as representing the rental value of any part of the premises occupied for the purposes of administering this Act and the regulations.

7. (1) The accounts relating to the Fund shall be audited by the Auditor-General who shall have in respect thereof all the powers conferred on him by any law relating to the audit of public accounts.

(2) The Audit Act, 1902, applies to members and employees of the Board in the same manner as it applies to accounting officers in public departments.

8. (1) The Treasurer may, on the application of the Board and on such terms and conditions as the Treasurer thinks fit, lend money to the Board.

(2) The Board may, for the purpose of obtaining temporary financial accommodation, borrow by way of overdraft from any bank but the total amount owing on all borrowings made under this subsection shall not at any time exceed \$500,000.

9.

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No. 98, 1974 **9.** (1) The Board shall cause an investigation to determine the sufficiency of the Fund and the adequacy of the rate of the long service charge to be made as at a date to be determined by the Minister.

Actuarial
investiga-
tion of
Fund.

(2) The Board shall cause further such investigations to be made as at such dates as may be determined by the Board but so that the interval between the dates as at which successive investigations are made does not exceed three years.

(3) An investigation under subsection (1) or (2) shall be made by an actuary or actuaries appointed by the Board.

(4) An actuary who makes, or actuaries who make, an investigation under subsection (1) or (2) shall report to the Board the result of the investigation and shall state whether or not in his or their opinion any reduction or increase should be made in the rate of the long service charge.

(5) The Board shall, not later than two months after it receives a report under subsection (4), forward the report to the Minister together with such comments thereon as it deems appropriate.

PART

PART III.

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REGISTER OF WORKERS.

10. (1) The Board shall keep in such form and manner as it thinks fit a register of workers in which it shall cause to be entered—

Register
of workers.

- (a) the names of all persons who have applied in accordance with subsection (3) to have their names entered in that register;
- (b) where any such person, on any working day during the month in which the appointed day occurs, is a worker, is absent from his work as a worker under a contract of employment—
 - (i) on any paid leave granted by his employer;
 - (ii) on account of incapacity arising out of injury, within the meaning of section 6 (1) of the Workers' Compensation Act, 1926, being injury arising out of or in the course of his employment on work which was being performed by him as a worker or which, had this Act commenced, would have been work being performed by him as a worker; or
 - (iii) on account of illness or other injury, being illness or injury certified by a medical practitioner to be a reasonable ground for his inability to perform building and construction work,

or performs building and construction work in respect of which a return is not required to be lodged with the Board by reason of section 14 (10), a statement that the name of that person is entered in the register as the name of a foundation worker;

- (c) the date on which each such person became a registered worker;

(d)

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- (d) in respect of each such person, particulars (as ascertained by the Board from returns furnished by employers under section 14 (3) or (6) or from such other information as satisfies the Board as to the particulars) of the working days on which he has, after the appointed day, been a worker in the building and construction industry;
- (e) in respect of each such person, the number of days' service in the building and construction industry with which that person is credited in accordance with section 11; and
- (f) such other information relating to workers and employers as the Board deems necessary for the purpose of administering this Act.

(2) The reference in subsection (1) (c) to the date on which a person became a registered worker is a reference to the date on which that person applied to have his name entered in the register or to such earlier date as the Board may under subsection (4) fix in respect of that person or in respect of any class of persons to which that person belongs.

(3) A person—

- (a) may within the period of two months after the date of commencement of this Act or within such time after the expiration of that period as the Board may, under subsection (4), fix in respect of him or in respect of any class of persons to which he belongs, apply to the Board to have his name entered in the register as the name of a foundation worker; or
- (b) whose name is not entered in the register as the name of a foundation worker may, at any time, apply to have his name entered in the register.

(4)

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(4) Where it considers that special circumstances warrant its doing so, the Board may, in respect of any person or class of persons, fix—

- (a) for the purpose of subsection (2), an earlier date than the date on which that person or a person belonging to that class applied to have his name entered in the register; or
- (b) for the purpose of subsection (3), a later time than the time when the period referred to in that subsection expires.

11. (1) For the purposes of section 10 (1) (e), a registered worker shall be credited in the register with one day's service in the building and construction industry—

- (a) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker) on which he performs building and construction work and, where he performs building and construction work on part of any working day for one employer and on another part or other parts of that working day for another employer or other employers, for each part of that working day during which he performs that work for different employers (being in each case work particulars of which are required to be shown in a return under section 14); and
- (b) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker) on which he is absent from his work as a worker under a contract of employment—
 - (i) on any paid leave, other than annual leave, granted by his employer;

(ii)

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- (ii) on account of incapacity arising out of injury within the meaning of section 6 (1) of the Workers' Compensation Act, 1926, being injury arising out of or in the course of his employment on work which was being performed by him as a worker; or
- (iii) on account of illness or other injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work,

but shall not—

- (c) in respect of the period commencing on the appointed day and ending on the next following thirtieth day of June, be so credited with more days' service in the building and construction industry than equals the number that bears to two hundred and twenty the same proportion as the period, in whole months, commencing on the appointed day and ending on the next following thirtieth day of June bears to twelve; or
- (d) in respect of any year ending on any subsequent thirtieth day of June, be so credited with more than two hundred and twenty days' service in the building and construction industry.

(2) For the purposes of section 10 (1) (e), a registered worker who is a foundation worker shall, in addition to being credited with service in the building and construction industry in accordance with subsection (1), be credited on the day on which his name is entered in the register as the name of a foundation worker with 275 days' service in the building and construction industry.

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12. The Board shall as soon as practicable after the thirtieth day of June in each year serve on each person who on that day was a registered worker a notice specifying—

No. 98, 1974
 Notice of service in the building and construction industry.

(a) in the case of notices served as soon as practicable after the thirtieth day of June next following the appointed day—

- (i) whether the name of that registered worker has been entered in the register as the name of a foundation worker; and
- (ii) the number of days' service in the building and construction industry, as shown in the register, with which that registered worker has, in accordance with section 11, been credited in respect of the period commencing on the appointed day and ending on that thirtieth day of June; and

(b) in the case of subsequent notices, the number of days' service in the building and construction industry, as shown in the register, with which that registered worker has, in accordance with section 11, been credited in respect of the year ended the thirtieth day of June next preceding the date on which the notice is so served,

and also specifying the total number of days' service in the building and construction industry with which that registered worker has, in accordance with section 11, been credited.

13. (1) The Committee may, upon an application made under this section, make a determination—

Determination whether work is building and construction work or of ordinary hours.

(a) that—

- (i) any work specified in the determination for which a rate of pay is fixed by an award is or is not building or construction work on the ground that it is or is not the kind of work usually performed by any of the persons specified in paragraph (a) of the definition of "building and construction work" in section 4 (1); and

(ii)

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- (ii) where it proposes to make a determination under subparagraph (i), that any work so specified that has been performed was building and construction work, that work was performed by any worker so specified who is a party to the application on a working day so specified;
- (b) that any work specified in the determination is not building and construction work if—
- (i) it is the work of carrying out maintenance or repairs which, in the opinion of the Committee, is or are of a routine or minor nature of or to buildings or works owned or occupied by a person engaged in the building and construction industry and used by him in connection with his carrying on business in that industry; and
 - (ii) that person, although so engaged, is not, in the opinion of the Committee, substantially so engaged; or
- (c) that the ordinary hours in relation to building and construction work of any kind specified in the determination, being work in relation to which the ordinary hours are not ascertainable under paragraph (a) of the definition of “ordinary hours” in section 4 (1), are such hours as are specified in the determination.

(2) An application for a determination under subsection (1) in relation to any work may be made by or on behalf of any person for whom or by whom the work has been or is to be performed—

- (a) where the work has not been performed, at any time before the work is performed; or

(b)

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(b) where the work has been performed, at any time **No. 98, 1974** within six months, or such longer period as the Committee may in any particular case allow, after the thirtieth day of June in the year in which the work is performed.

(3) Notice of an application for a determination under subsection (1) and of the date on which and place at which the Committee proposes to consider the application shall be sent by post by the Committee at least seven days before that date to such persons as, in the opinion of the Committee, have a sufficient interest in the making of the determination and any such person may appear before and be heard by the Committee before it makes its determination and shall be deemed to be a party to the application.

(4) A determination made under this section by the Committee has effect on and from such date (being a date before the date on which or being the date on which the determination is made) as may be specified in the determination and is final and conclusive.

(5) Where a determination relates to work performed in any period or year in respect of which the Board has served any notices under section 12, the Committee shall not, under subsection (4), specify as the date on which the determination takes effect a date that is earlier than the date of the first day of that period or year.

(6) The procedure on any such determination shall, subject to any regulation with respect thereto, be as determined by the Committee.

PART IV.

RETURNS AND LONG SERVICE CHARGES.

14. (1) In this section "month" means any month of January, February, March, April, May, June, July, August, September, October, November or December commencing on or after the appointed day. **Returns and payment of long service charges.**

(2)

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(2) For the purpose of this section, where a worker performs any building and construction work under a contract other than a contract of employment, the award pay payable for work of the class to which that work belongs shall be deemed to be payable to that worker by his employer on and in respect of each working day on which he performs that work.

(3) An employer by whom any moneys are paid or payable in any month in respect of building and construction work performed by workers (whether or not those moneys are paid or payable by that employer directly to those workers) shall within fourteen days after the expiration of that month lodge with the Board a return relating to that month that complies with subsection (4) and pay to the Board, as long service charges, an amount equal to the prescribed percentage of the total of the amounts shown in the return pursuant to subsection (4) (b) (iii) and (iv).

Penalty : \$1,000.

(4) A return lodged under subsection (3) shall—

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

(b) contain particulars of—

(i) each worker who performed building and construction work in respect of the performance of which any moneys were paid or payable by the employer making the return during the month to which the return relates (whether or not those moneys were paid or payable directly to that worker);

(ii) in relation to each such worker, the working days during that month on which or on any part of which that worker performed that building and construction work;

(iii)

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- (iii) in the case of a worker who performed that No. 98, 1974 work under a contract of employment—the amount paid or payable to that worker in respect of the performance of that work during ordinary hours; and
 - (iv) in the case of any other worker—the amount of the award pay that would have been payable under the appropriate award in respect of the performance of that work during ordinary hours;
- (c) contain such other particulars as are requested in the form;
 - (d) be completed in accordance with the directions contained in the form; and
 - (e) be signed by the employer making the return or by some person authorised by him and notified, within the prescribed time and in the prescribed manner, by him to the Board as being authorised to sign returns on his behalf.

(5) A person who has made an application to the Committee under section 13 in respect of any work performed or to be performed for him does not, if the application has not been determined or withdrawn, contravene subsection (3) by reason only of his failing to lodge a return in respect of a person who has performed that work or to pay any long service charge in respect of moneys paid or payable in respect of the performance of that work.

(6) Where—

- (a) a person has made an application to the Committee under section 13;

(b)

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(b) the Committee has determined that work of the kind specified in the application is building and construction work; and

(c) the determination has effect on and from a date before the date on which the determination was made,

any person who was an employer of the worker who performed that work during the period commencing on the date on and from which the determination has effect and ending on the day before the date on which the determination was made, that person being a person who was a party to the proceedings before the Committee, shall within fourteen days after the date on which the determination was made—

(d) lodge with the Board a return complying with subsection (7); and

(e) pay to the Board, as long service charges, an amount equal to the prescribed percentage of the total of the amounts shown in the return pursuant to subsection (7) (b) (iii) and (iv).

Penalty : \$1,000.

(7) A return lodged under subsection (6) (d) shall—

(a) comply with subsection (4), paragraph (b) excepted; and

(b) contain particulars of—

(i) each worker who at any time during the period referred to in subsection (6) performed the work the subject of the

determination

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determination in respect of the performance of which any moneys were paid or payable by the employer making the return (whether or not those moneys were paid or payable directly to that worker);

- (ii) in relation to each such worker, the working days during that period on which or on any part of which that worker performed that work;
- (iii) in the case of a worker who performed that work under a contract of employment—the amount paid or payable to that worker in respect of the performance of that work during ordinary hours; and
- (iv) in the case of any other worker—the amount of the award pay that would have been payable under the appropriate award in respect of the performance of that work during ordinary hours.

(8) A person shall not in any return lodged under subsection (3) or (6) (d) make a statement that is false or misleading in a material particular.

Penalty : \$1,000.

(9) Where—

- (a) during any month building and construction work was performed by a worker and two or more persons were employers (not being joint employers) of that worker in relation to that work;
- (b) one of those employers informed the other employer or another of those employers in writing that he proposed to include in the return required to be

lodged

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lodged by him under subsection (3) or (6) (d) particulars of that worker and of the working days on which he performed that work,

the other employer or each of the other employers is, notwithstanding subsection (3) or (6), not required to make a return, or to include in any return lodged by him, under that subsection the particulars referred to in subsection (4) (b) or (7) (b), as the case may be, in respect of the worker who performed that work or to pay any long service charges in respect of the amounts relating to that work and referred to in subsection (4) (b) (iii) or (iv) or subsection (7) (b) (iii) or (iv), as the case may be.

(10) Nothing in this section requires a person, not being a corporation, to make a return, or to include in any return lodged by him, under subsection (3) or (6) particulars referred to in subsection (4) (b) or (7) (b), as the case may be, in respect of a worker where those particulars relate to work performed after the appointed day under a contract (other than a contract of employment with that person) entered into before the appointed day for the construction, reconstruction, renovation, alteration, demolition or maintenance or repairs of or to a single dwelling-house intended for use as a residence by that person.

(11) Nothing in this section requires a person who is one of a number of joint employers to make a return, or to include in any return lodged by him, under subsection (3) or (6) particulars referred to in subsection (4) (b) or (7) (b), as the case may be, in respect of a worker where those particulars are included in a return made jointly by those employers.

PART

PART V.

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ENTITLEMENT TO LONG SERVICE PAYMENT.

15. (1) In this Part, "ordinary pay", in relation to a worker entitled to a long service payment, means—

Calculation
of long
service
payment.

(a) in any case where—

- (i) on each of the last fifty-five working days with which he was credited in the register before the time he became entitled to that long service payment he was a worker by reason only of his being employed under a contract of employment; and
- (ii) at least five of those fifty-five days were full working days,

the remuneration that was payable to him under that contract for the last five of those fifty-five days that were full working days; or

(b) in any other case—an amount equal to the award pay that would have been payable to him if he had—

- (i) performed, under a contract of employment, such building and construction work of the kind performed by him on any of the last fifty-five working days credited to him in the register before he became entitled to that long service payment as attracted the lower or lowest rate of award pay; and
- (ii) performed that work for five full working days.

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(2) For the purpose of the definition of "ordinary pay" in subsection (1), "full working day" means a working day on which a worker performs work—

- (a) in the case where he does so under a contract of employment, for the maximum period for which the remuneration payable to him is required to be calculated under that contract, or, if that period is not fixed by the contract, under the award applicable to that work, at the rate applicable to work performed during ordinary hours; or
- (b) in any other case, for the maximum period for which the remuneration that would, if he were employed under a contract of employment, be payable to him under the award relating to that work at the rate applicable to work performed during **ordinary hours.**

(3) For the purpose of this Part, a worker shall be deemed to have completed one year's service as a worker for every 220 days' service with which he is credited in the register.

Determina-
tion of
ordinary
pay.

16. (1) Where a registered worker becomes entitled to a long service payment and the Board is of the opinion that the ordinary pay of that worker, ascertained under paragraph (a) of the definition of "ordinary pay" in section 15 (1), is excessive by reason of—

- (a) the nature of the work performed by that worker on the last fifty-five working days with which he was credited before he became entitled to that long service payment; and

(b)

Building and Construction Industry Long Service Payments.

- (b) the remuneration that was payable to him in respect **No. 98, 1974** of such of that work as was performed during ordinary hours,

the Board may, on the advice of the Committee, inform the worker, by notice in writing served on the worker, that unless he satisfies the Board to the contrary, the Board proposes to determine his ordinary pay at a lesser amount.

(2) A notice referred to in subsection (1) shall specify a time and place at which the worker may appear before the Board for the purpose of satisfying it as to his ordinary pay.

(3) Where a worker on whom such a notice is served—

- (a) does not appear by himself or by some person acting for him at the time and place specified in the notice; or
- (b) does so appear but does not satisfy the Board that his ordinary pay, ascertained under paragraph (a) of the definition of "ordinary pay" in section 15 (1), is not excessive having regard to the reasons referred to in subsection (1) (a) and (b),

the Board may, on the advice of the Committee, determine the ordinary pay of that worker by reference to which the long service payment to which he is entitled is to be calculated at such amount, being less than his ordinary pay referred to in subsection (1), as the Board thinks fit.

(4) Notice of the Board's determination under subsection (3) shall be served on the worker concerned.

(5)

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No. 98, 1974
—

(5) Where a worker on whom a notice referred to in subsection (1) has been served appears before the Board pursuant to the notice, he may, within seven days after notice of the Board's determination under subsection (3) is served on him, appeal against the determination to an industrial magistrate holding office under the Industrial Arbitration Act, 1940.

(6) The industrial magistrate shall hear and determine the appeal and his decision on the appeal is final and conclusive and shall be given effect to by the Board.

(7) Any such appeal shall be in the nature of a rehearing.

(8) The ordinary pay, as determined under this section, of a registered worker entitled to a long service payment shall, notwithstanding any other provision of this Act, be the ordinary pay of that worker for the purpose of calculating the amount of that payment.

(9) The regulations may prescribe the manner of making and the procedure for hearing and determining an appeal under this section.

Long
service
payments.

17. (1) A service factor of thirteen sixtieths is applicable to each registered worker in respect of each period of fifty-five working days credited to him in the register.

(2) Subject to subsection (7), a registered worker—

(a) who has completed fifteen or more years' service as a worker;

(b)

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- (b) who has completed ten or more years' service as a No. 98, 1974
worker and intends permanently to cease to work in
the building and construction industry;
- (c) who has completed five or more years' service as a
worker, otherwise than as an apprentice, and intends
permanently to cease to work in the building and
construction industry;
- (d) who is a foundation worker, has attained the
prescribed age and intends permanently to cease to
work in the building and construction industry;
- (e) who is a foundation worker, who has had any service
as a worker otherwise than as an apprentice and
whom a medical practitioner has certified to be
totally incapacitated for service in the building
and construction industry;
- (f) who is not a foundation worker, who has a credit in
the register of at least fifty-five days' service as a
worker otherwise than as an apprentice and whom
a medical practitioner has certified to be totally
incapacitated for service in the building and
construction industry; or
- (g) who has completed ten or more years' service as a
worker since he became entitled to apply for a long
service payment (whether or not it was paid) by
reason of his being a person referred to in
paragraph (a),

may apply to the Board for a long service payment.

Building and Construction Industry Long Service Payments.

No. 98, 1974

(3) The personal representative of a registered worker who has died and who—

(a) immediately before his death was entitled to apply for a long service payment under subsection (2) (a) or (g);

(b) had, immediately before his death, completed ten or more years' service as a worker;

(c) had, immediately before his death, completed five or more years' service as a worker otherwise than as an apprentice but was not a person referred to in paragraph (a) or (b); or

(d) was a foundation worker and had attained the prescribed age,

may apply to the Board for a long service payment.

(4) The reference in subsections (2) (d) and (3) (d) to the prescribed age is a reference—

(a) except as provided in paragraph (b), to the age of sixty-five years; or

(b) where a regulation has been made for the purpose of this section prescribing the age of sixty years as the prescribed age, to the age of sixty years.

(5)

Building and Construction Industry Long Service Payments.

(5) As soon as practicable after an application is made to the Board under subsection (2) or (3), the Board shall, subject to subsection (6)—

- (a) except where the applicant is a person referred to in subsection (2) (b) or (c), pay to the applicant;
or
- (b) where the applicant is a person referred to in subsection (2) (b) or (c) and the Board is satisfied that he intends permanently to cease to work in the building and construction industry, pay to the applicant,

a long service payment equal to the product obtained by multiplying his ordinary pay by the service factor applicable to him under subsection (1) at the date on which he became entitled to that payment or, if he so requests, at the date of his application.

(6) Where a long service payment payable under subsection (5) is payable in respect of a registered worker who is or, immediately before his death, was a foundation worker and the application for the payment was made under—

- (a) subsection (2) (a), (b) or (g) or subsection (3) (a) or (b), the payment under subsection (5) shall be increased by an amount equal to the product obtained by multiplying the ordinary pay of the registered worker by one and eleven fifteenths;
- (b) subsection (2) (c) or subsection (3) (c), the payment under subsection (5) shall be increased by an amount equal to the product obtained by multiplying the ordinary pay of the registered worker by thirteen fifteenths and, where the number of

years

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years of service by reference to which the service factor applicable to that registered worker is calculated exceeds five, shall be further increased by an amount equal to the product obtained by multiplying the ordinary pay of the registered worker by a number which is the product obtained by multiplying thirteen seventy-fifths by that number of years reduced by five; or

- (c) subsection (2) (d), (e) or (f) or subsection (3) (d), the payment under subsection (5) shall be increased by an amount equal to the product obtained by multiplying the ordinary pay of the registered worker by a number which is the product obtained by multiplying thirteen seventy-fifths by the number of years of service by reference to which the service factor applicable to the registered worker is calculated.

(7) A registered worker to whom a long service payment is made pursuant to an application made under any of the paragraphs of subsection (2) is not entitled subsequently to apply for another long service payment unless he makes that subsequent application under a paragraph of that subsection the requirements of which he has fulfilled since he became entitled to apply for that payment.

(8) Where a long service payment has been made to a registered worker pursuant to an application made by him under subsection (2) (b), (c), (d), (e) or (f), the registered worker shall not be credited in the register with any service as a worker in respect of any building and construction work performed by him during the period of one year next following the date of that application.

Limitation
on long
service
payment
where
service
interrupted.

18. (1) Notwithstanding any other provision of this Part, where a registered worker is not entitled to be credited under section 11 with any service in the building and construction industry in respect of any prescribed period, any

such

Building and Construction Industry Long Service Payments.

such service with which he had before the commencement of that prescribed period been so credited shall not be taken into account in calculating any long service payment that is or would otherwise be payable to him except a long service payment to which he was entitled at the commencement of that prescribed period and for the payment of which he has applied within two years after the expiration of that period. No. 98, 1974

(2) In subsection (1) "prescribed period", in relation to a registered worker or a worker, means a continuous period whose duration is equal to the total of—

- (a) a period of twelve consecutive months; and
- (b) any period which occurred during those twelve consecutive months and during which the registered worker or worker did not work as a worker as a result, direct or indirect, of an industrial dispute.

19. (1) A person who, in respect of any period of service in the building and construction industry (whether that period was before or after, or partly before and partly after, the appointed day), applies for and takes or receives any benefits under the Long Service Leave Act, 1955, or any benefits in the nature of long service leave under any scheme to which an exemption granted to an employer under section 5 (2) (a) of that Act relates, is not entitled to be credited under section 11 with any service which he had in that industry at any time before the expiration of that period. Election to take benefits under this Act or under Long Service Leave Act, 1955.

(2) A person who—

- (a) in respect of any period of service in the building and construction industry (whether that period was before or after, or partly before and partly after, the appointed day) becomes entitled to any benefits referred to in subsection (1); and

(2)

(b)

Building and Construction Industry Long Service Payments.

- No. 98, 1974
- (b) in respect of any part of that period, has applied for and taken (whether before or after, or partly before and partly after, that day) any long service leave in advance,

is not entitled to be credited under section 11 with any service which he had in that industry before the expiration of that period.

(3) A person who is paid any long service payment under this Act in respect of a registered worker is not, in respect of any period by reference to which the service factor applicable to that worker and used for calculating that long service payment was calculated, entitled to any benefits under the Long Service Leave Act, 1955, or any benefits in the nature of long service leave under a scheme to which an exemption granted to an employer under section 5 (2) (a) of that Act relates.

(4) Where—

- (a) a person applies for and takes any benefits referred to in subsection (1) in respect of any period of service in the building and construction industry; and
- (b) but for his doing so, he would have been entitled to be paid a long service payment under this Act calculated by reference to a service factor applicable to a worker calculated by reference to a period which ended at the same time as or before the period referred to in paragraph (a),

the Board shall, upon application therefor made in writing by the person by whom the benefits referred to in paragraph (a) were provided within three months after those benefits were provided, pay to that lastmentioned person that long service payment.

(5)

Building and Construction Industry Long Service Payments.

(5) Subject to this Act, a person is entitled to the No. 98, 1974 benefits provided by this Act notwithstanding the provisions of any other Act.

PART VI.

BUILDING AND CONSTRUCTION INDUSTRY COMMITTEE.

20. (1) There shall be a Building and Construction Industry Committee which shall consist of seven members. **Building and Construction Industry Committee.**

(2) Of the members—

- (a) one, who shall be the Chairman of the Committee, shall be a member of the Board appointed by the Board; and
- (b) the remainder shall be appointed by the Minister.

(3) Of the members appointed by the Minister—

- (a) three shall be appointed from a panel of not less than six persons nominated by the Labor Council of New South Wales within such period as may from time to time be fixed by the Minister and notified by him to that body; and
- (b) three shall be appointed from a panel of not less than six persons nominated jointly by the Master Builders' Association of New South Wales and the Employers' Federation of New South Wales within such period as may from time to time be fixed by the Minister and notified by him to those bodies.

(4)

Building and Construction Industry Long Service Payments.

No. 98, 1974

(4) If a panel is not nominated as provided by subsection (3) (a) or (b) and the period within which that panel is required to be nominated has expired, the Minister may appoint such number of persons, nominated by him, as may be necessary fully to constitute the Committee to be members of the Committee instead of the members required to be appointed from that panel.

(5) A member appointed by the Minister shall hold office for such term as may be specified in the instrument of his appointment or until he is removed from office by the Minister.

(6) The Minister may at any time remove from office a member appointed by him.

(7) On the occurrence of a vacancy in the office of a member appointed by the Minister, the Minister may appoint a person to fill the vacant office so that the Committee consists of persons appointed in accordance with subsections (2) and (3) or subsection (4).

(8) A member appointed by the Minister shall be entitled to be paid such fees and allowances as are fixed by the Minister with the approval of the Treasurer.

(9) Where by or under any other Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Committee or from accepting and retaining any fees or allowances payable to him under this section.

Building and Construction Industry Long Service Payments.

21. (1) The Minister may, from each of two panels of No. 98, 1974 persons—

Alternate
members.

- (a) one nominated by the Labor Council of New South Wales; and
- (b) one nominated jointly by the Master Builders' Association and the Employers' Federation of New South Wales,

appoint not more than three persons to act as alternate members of the Committee.

(2) A panel nominated for the purpose of subsection (1) shall consist of not less than six persons.

(3) A person appointed to act as an alternate member—

- (a) may act in the place of a member of the Committee at any time when a member, other than the Chairman, is not present for any reason at a meeting of the Committee but shall not act in the place of a member—
 - (i) referred to in section 20 (3) (a) unless he was appointed as an alternate member from a panel referred to in subsection (1) (a); or
 - (ii) referred to in section 20 (3) (b) unless he was appointed as an alternate member from a panel referred to in subsection (1) (b); and

(b)

Building and Construction Industry Long Service Payments.

No. 98, 1974 (b) when so acting shall have and may exercise the powers, authorities, duties and functions under this Act of the member in whose place he is acting and shall be deemed to be a member of the Committee.

Meetings of the Committee. **22.** (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Committee.

(2) The Chairman shall preside at all meetings of the Committee at which he is present and, if he is absent from any meeting, a member elected by the members present shall preside at that meeting.

(3) Four members shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

(4) In the event of an equality of votes at any meeting of the Committee, the person presiding at the meeting shall have, in addition to a deliberative vote, a second or casting vote.

(5) A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

(6) The Committee shall cause full and accurate minutes to be kept of the proceedings at its meetings and shall submit to the Board a copy of the minutes of each meeting within fourteen days after the day on which it was held.

*Building and Construction Industry Long Service Payments.***23. The Committee—**

No. 98, 1974

Functions
of
Committee.

- (a) shall hear and determine applications under section 13;
- (b) shall furnish to the Board advice and recommendations on such matters relating to the administration of this Act as are referred to it by the Board; and
- (c) may make recommendations to the Board with respect to—
- (i) the administration of this Act;
 - (ii) the publicising to workers and employers of matters relating to the administration of this Act;
 - (iii) the investment of the Fund; and
 - (iv) the rate of the long service charge.

PART VII.**GENERAL.**

24. An employer shall keep such books and records as may be prescribed containing such particulars as may be prescribed relating to workers and shall preserve each of those books and records for a period of three years after the last entry was made in it.

25.

Building and Construction Industry Long Service Payments.

No. 98, 1974
 Officers
 and
 employees.

25. (1) Except as provided by subsection (2), such officers and employees as may be necessary for the purpose of carrying out the provisions of this Act shall be appointed by the Governor under and subject to the Public Service Act, 1902.

(2) The Builders Licensing Board may, with the approval of the Public Service Board, appoint and employ, on a casual basis and on such other terms and conditions as may be approved by the Builders Licensing Board, persons to act as inspectors for the purposes of this Act.

Service of
 notices,
 etc.

26. A notice or other document that may be served by the Board or the Committee under this Act may be served—

(a) by delivering it personally to the person to whom it is addressed; or

(b) where it is addressed to a registered worker—

(i) by delivering it to any place shown in the register as the registered worker's place of abode or business and by leaving it there with some person for that registered worker; or

(ii) by posting it by certified mail in an envelope duly stamped and addressed to the registered worker to whom it is addressed at any place shown in the register as the registered worker's place of abode or business,

and shall be deemed to have been served upon its being so delivered or, in the case of a notice or document served as referred to in paragraph (b) (ii), shall be prima facie deemed to have been served when it would be delivered in the ordinary course of post.

Building and Construction Industry Long Service Payments.

27. Where the Board finds in any case that long service charges have been overpaid, it may, upon application therefor being made by the person entitled thereto within two years after the date of overpayment, refund to that person the amount of long service charges found to be overpaid. No. 98, 1974
Refunds.

28. Where the Board has reason to believe that an employer may leave Australia before any long service charge becomes due and payable by him, the long service charge shall be due and payable on such date as the Board fixes and specifies in a notice served on the employer. Employer
leaving
Australia.

29. (1) Long service charges shall be deemed when they become due and payable to be a debt due to Her Majesty and payable to the Board. Recovery
of long
service
charge.

(2) Any long service charge unpaid may be sued for and recovered in any court of competent jurisdiction by the Board or on behalf of the Board by any person appointed by it to act on its behalf.

30. If in any proceedings against an employer for the recovery of any long service charge the defendant— Substituted
service.

(a) is absent from Australia and has not, to the knowledge of the Board after reasonable inquiry in that behalf, any attorney or agent in Australia on whom service of process can be effected; or

(b) cannot after reasonable inquiry be found, service of any process in the proceedings may, without leave of the court, be effected on him by posting it by prepaid post addressed to him at his last known place of business or abode in Australia.

31.

Building and Construction Industry Long Service Payments.

No. 98, 1974

Liquidator
to give
notice.

31. (1) Every person who is a liquidator of any company which is being wound-up and which is an employer of workers shall, within fourteen days after he has become a liquidator of that company, serve on the Board notice in writing of his appointment as liquidator.

(2) The Board shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Board to be sufficient to provide for any long service charges which then are or which will thereafter become payable by the company.

(3) The liquidator—

(a) shall not without leave of the Board part with any of the assets of the company until he has been so notified;

(b) shall, subject to section 25 of the Pay-roll Tax Act, 1971, set aside out of the assets available for the payment of the long service charges, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and

(c) shall, to the extent of the value of the assets which he is required to set aside, be liable as trustee to pay the long service charges.

(4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the long service charges for which he is liable under subsection (3)), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at any time, available to him for payment of the long service charges, be personally liable to pay the long service charges, and shall be guilty of an offence.

Penalty : \$1,000.

(5)

Building and Construction Industry Long Service Payments.

(5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the long service charges due in respect of the company being wound-up, the other person or persons shall each be liable to pay that person his equal share of the amount of the long service charges so paid. No. 98, 1974

(6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Board, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any long service charges payable in respect of the company.

(7) Nothing in this section affects any of the provisions of the Companies Act, 1961.

(8) In relation to any person who was on the appointed day the liquidator of a company referred to in subsection (1) that subsection shall be read and construed as if the reference to the period of fourteen days after that person became the liquidator of that company were a reference to a period of fourteen days after the appointed day.

32. (1) Where an agent for an absentee principal has been required by the principal to wind-up the business of his principal he shall, before taking any steps or further steps to wind-up the business, serve on the Board notice of his intention so to do, and shall set aside such sum out of the assets of the principal as is specified in a notice served on him by the Board as being necessary to provide for any long service charges that are or may become payable. Agent for
absentee
principal
winding-up
business.

Penalty : \$1,000.

(2)

Building and Construction Industry Long Service Payments.

No. 98, 1974

(2) An agent who fails to give notice to the Board or fails to provide for payment of the long service charges as required by this section shall be personally liable for any long service charges that become payable in respect of the business of the principal.

Where long service charges not paid during lifetime.

33. (1) The provisions of this section apply where, whether intentionally or not, a person escapes full payment of long service charges in his lifetime by reason of his not having duly made any, or full, complete and accurate, returns.

(2) The Board has the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as it would have had against that person if he were still living.

(3) The trustees shall make such returns under this Act as the Board requires.

(4) The trustees are subject to long service charges to the same extent as the deceased person would be subject to long service charges if he were still living, but the Board may in any particular case, for reasons that, in its discretion, it thinks sufficient, remit any long service charges or a part thereof.

(5) The amount of any long service charges payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

Provision for payment of long service charges by executors or administrators.

34. (1) Where, at the time of an employer's death, he has not paid the whole of the long service charges payable by him up to the date of his death, the Board shall have the same powers and remedies for the recovery of the long service charges from the executors and administrators as it would have against that employer, if he were alive.

(2) The executors or administrators shall furnish such of the returns mentioned in Part IV as have not been made by the deceased.

(3)

Building and Construction Industry Long Service Payments.

(3) Where the executors or administrators are unable or fail to furnish a return, the Board may estimate and make an assessment of the amount of long service charges due by the deceased employer. No. 98, 1974

(4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Board may cause an assessment to be made of the amount of long service charges due by the deceased.

(5) The Board shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State of the Commonwealth in which the deceased resided.

(6) Any person claiming an interest in the estate of the deceased may, within forty-two days after the first publication of notice of the assessment, post to or lodge with the Board an objection in writing against the assessment stating fully and in detail the grounds on which he relies.

(7) Subject to any amendment of the assessment by the Board or by the Supreme Court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Board.

(8) The Supreme Court may, on application by the Board, order that a sufficient part of the property of the deceased be sold to pay the assessment and the cost of the application and any property sold pursuant to such an order shall vest in the purchaser.

(9) Notwithstanding anything contained in subsections (7) and (8), if at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to a person, that person may, within forty-two days after the date on which probate was, or letters of administration were, granted, lodge with the Board an objection against the assessment, stating fully and in detail the grounds on which he relies.

Building and Construction Industry Long Service Payments.

No. 98, 1974 **35.** Where two or more persons jointly employ a worker they shall each be liable for the whole of the long service charges payable in respect of that worker but any of them who has paid the long service charges may recover from the other or others in any court of competent jurisdiction an equal share of those charges.

Contributions by joint employers.

36. Payment of penalties under this Act shall not relieve any person from liability to any long service charges to which he would otherwise be liable.

Penalties no relief from long service charges.

37. (1) Subject to his complying with subsection (3), any person authorised in writing by the Board may—

Power of entry and inspection.

- (a) enter any land or building for the purpose of ascertaining whether any work being performed on the land or in the building is work being performed by a worker;
- (b) require an employer to produce, at such time and place as that person may specify, any records, books or documents required to be kept by him under this Act; and
- (c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act and the regulations have been complied with.

(2) A person shall not wilfully delay or obstruct a person authorised under subsection (1) in the exercise of his powers under that subsection or, being the occupier of any land or building refuse to permit or to assist a person so authorised to exercise those powers.

Penalty : \$1,000.

(3)

Building and Construction Industry Long Service Payments.

(3) Every person authorised under subsection (1) **No. 98, 1974** shall be provided by the Board with a certificate of his authority, and on applying for admission to any land or building which he is empowered by this section to enter shall, if requested to do so, produce the certificate to the occupier of the land or building.

38. The provisions of section 54 of the Builders Licensing Act, 1971, apply to and in respect of legal proceedings by or against the Board under this Act in the same way as they apply to legal proceedings by or against the Board under that Act. **Proof of certain matters not required.**

39. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate sitting in petty sessions alone. **Proceedings for offences.**

40. (1) The Governor may make regulations not inconsistent with this Act prescribing any matter or thing which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for the carrying out or giving effect to this Act. **Regulations.**

(2) The regulations may impose a penalty not exceeding \$200 for any offence against the regulations and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day the offence continues.