

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. 73, 1976.

An Act to amend the Building and Construction Industry
Long Service Payments Act, 1974; and to validate certain
matters. [Assented to, 2nd December, 1976.]

BE

*Building and Construction Industry Long Service Payments
(Amendment).*

BE it enacted by the Queen's Most Excellent Majesty, by 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.

Short title. 1. This Act may be cited as the "Building and Construction Industry Long Service Payments (Amendment) Act, 1976".

**Commence-
ment.** 2. (1) This section (subsection (4) excepted) and sections 1, 3, 4, 6, 7, 8, 9, 10, 11 and 12 shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedules 1–5, commence or be deemed to have commenced on the day on which that provision commences or is deemed to have commenced, as the case may require.

(3) Subsection (4), Schedule 1, Schedule 2 (except so much of Schedule 2 (2) (e) as inserts section 11 (1) (e) and section 11 (1) (f) into the Principal Act), Schedule 3, Schedule 4 (except Schedule 4 (3) (1)) and Schedule 5 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) So much of Schedule 2 (2) (e) as inserts section 11 (1) (e) and section 11 (1) (f) into the Principal Act and Schedule 4 (3) (1) shall be deemed to have commenced on 27th December, 1974.

3.

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(Amendment).*

3. In this Part and in Parts II, III and IV—

Interpre-
tation.

“Principal Act” means the Building and Construction Industry Long Service Payments Act, 1974;

“relevant period” means the period commencing on the appointed day as defined in section 4 (1) of the Principal Act and ending immediately before the second appointed day;

“second appointed day” means the day appointed and notified under section 2 (3).

4. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–6.

PART II.—PROVISIONS WITH RESPECT TO SUPERVISORY WORKERS—ss. 7–10.

PART III.—RETURNS AND LONG SERVICE CHARGES IN RESPECT OF RELEVANT PERIOD—s. 11.

PART IV.—PAYMENTS TO EMPLOYERS—s. 12.

SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

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Amendment
of Act No.
98, 1974.

5. The Principal Act is amended in the manner set forth in Schedules 1-5.

Validation
of certain
payments
made to
the Board.

6. Any amount paid to the Board as a long service charge before the second appointed day that would have been payable to the Board had the amendments made by Schedule 3 (1) (a) or (c) been in force when that amount was paid shall be deemed to have been paid under and in accordance with the provisions of section 14 (4) (b) (iii) or section 14 (7) (b) (iii) of the Principal Act, as in force when the amount was paid.

PART II.

PROVISIONS WITH RESPECT TO SUPERVISORY WORKERS.

Interpre-
tation.

7. In this Part—

“supervisory building and construction work” means work—

- (a) in the building and construction industry performed in New South Wales during the relevant period under a contract of employment by a person acting as a foreman, subforeman or leading-hand in the supervision of the performance of any work of the kind referred to in paragraph (a) of the definition of “building and construction work” in section 4 (1) of the Principal Act, as in force during the relevant period; or

(b)

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- (b) which has been determined by a determination referred to in section 9 to be supervisory building and construction work,

but does not include work which has been determined by such a determination not to be supervisory building and construction work;

“supervisory worker” means a person who—

- (a) during the relevant period, acted 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) of the definition of “building and construction work” in section 4 (1) of the Principal Act, as in force during the relevant period; and
- (b) when he so acted, was not a worker as defined in section 4 (1) of the Principal Act, as in force during the relevant period,

but does not include any such person who so acted under a contract of employment with any body constituted by an Act or by any Act of the Parliament of the Commonwealth or the council of a city, municipality or shire or a county council.

8. Where—

- (a) had the amendments made by Schedule 1 (2) (a) and (c) been in force during the relevant period a supervisory worker would at any time during that period have been a worker; and

Validation
of registra-
tion and
credits,
etc., of
supervisory
workers.

(b)

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- (b) the name of that supervisory worker has been or is entered in the register (whether or not as the name of a foundation worker) pursuant to an application purporting to have been made by him under section 10 (3) of the Principal Act during the relevant period,

then—

- (c) the name of that supervisory worker shall be deemed to be and always to have been validly entered in the register as the name of a foundation worker or as the name of a worker other than a foundation worker, as the case may be;
- (d) the date shown in the register as the date on which that supervisory worker purported to become a registered worker shall be deemed to be and always to have been the date on which that supervisory worker became a registered worker;
- (e) that supervisory worker shall be deemed to be and always to have been entitled to be credited in the register with such number of days' service in the building and construction industry as he would have been entitled to be credited with if, on each day or part of a day during the relevant period, being a day or part on which he was a supervisory worker, he had been a worker; and
- (f) any return made or long service charge paid in respect of that supervisory worker with respect to any day or part of a day during the relevant period, being a day or part on which he was a supervisory worker, shall be deemed to be and always to have been a return made or charge paid in accordance with the requirements of the Principal Act relating to the making of returns and the payment of long service charges in respect of workers.

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9. The provisions of section 13 of the Principal Act, as amended by this Act, apply, notwithstanding section 13 (5) of the Principal Act, so as to enable the Committee to make a determination that is relevant to the operation of this Part. Application of section 13 of the Principal Act.

10. For the purpose of the application of the Principal Act, as in force on, before or after the second appointed day, in respect of a supervisory worker, the ordinary hours, in respect of any work performed during the relevant period by a supervisory worker shall be deemed to be and always to have been— Ordinary hours of supervisory workers.

- (a) except as provided in paragraph (b)—such of the eight hours on each working day; and
- (b) in respect of any kind of work specified in the regulations—such of the prescribed number of hours on each working day,

between the hours of 6 a.m. and 6 p.m. as attract or attracted the lower or lowest rate of pay for the performance of that kind of work.

PART III.

**RETURNS AND LONG SERVICE CHARGES IN RESPECT OF
RELEVANT PERIOD.**

11. (1) In this section, "month" means the month of February, March, April, May, June, July or August, 1975. Returns and payment of long service charges.

(2)

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(2) For the purpose of this section, where a worker performed 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 have been payable to that worker by his employer on and in respect of each working day on which he performed that work.

(3) An employer by whom any moneys were paid or payable in any month in respect of building and construction work performed by workers (whether or not those moneys were paid or payable by that employer directly to those workers) shall within three months after the second appointed day 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 three per centum 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 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 or, where that work was not performed during ordinary hours, the amount that would have been payable to that worker in respect of the performance of that work if the hours during which it was performed had been 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 that employer to sign the return.

(5) A person who has made an application to the Committee under section 13 of the Principal Act, as amended by this Act, in respect of any work 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 performed that work or to pay any long service charge referred to in that subsection 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 of the Principal Act, as amended by this Act;

(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 in any month,

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 (8); and
- (e) pay to the Board, as long service charges, an amount equal to three per centum of the total of the amounts shown in the return pursuant to subsection (8) (b) (iii) and (iv).

Penalty: \$1,000.

(7) A return lodged under subsection (3) or (6) (d) and purporting to be signed by a person authorised by an employer to do so shall be deemed to have been signed by a person so authorised unless the contrary is proved.

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

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

(b)

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(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 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 or, where that work was not performed during ordinary hours, the amount that would have been payable to that worker in respect of the performance of that work if the hours during which it was performed had been 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.

(9) 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.

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(10) 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; and
- (b) one of those employers, within fourteen days after the expiration of the month in which work was performed, informed or, within three months after the second appointed day, informs the other employer or another of those employers in writing that he proposed or proposes to include in the return required to be 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 (8) (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 (8) (b) (iii) or (iv), as the case may be.

(11) 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 (8) (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.

(12)

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(12) 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 (8) (b), as the case may be, in respect of a worker where those particulars are included in a return made jointly by those employers.

(13) Nothing in this section applies to or in respect of an employer of a worker in relation to any work performed by that worker if that employer purported to lodge a return in respect of that work and paid, as long service charges, an amount in respect of that work as if section 14 of the Principal Act, as in force before the commencement of this section, had applied to and in respect of the employer of that worker in relation to that work.

(14) The provisions of section 13 of the Principal Act, as amended by this Act, apply so as to enable the Committee to make a determination that is relevant to the operation of this section but, for the purpose only of the application of that section pursuant to this subsection, subsection (2) (b) of that section shall be deemed to be amended by omitting the words "the thirtieth day of June in the year in which the work is performed" and by inserting instead the words "the second appointed day".

PART

*Building and Construction Industry Long Service Payments
(Amendment).*

PART IV.

PAYMENTS TO EMPLOYERS.

Payments
to employers
in respect
of benefits
provided
under the
Long Service
Leave Act,
1955.

12. (1) Where—

- (a) before the second appointed day an employer provided to any person any benefits referred to in section 19 (1) of the Principal Act, as in force during the relevant period, in respect of any period of service in the building and construction industry; and
- (b) that person—
 - (i) was an employee who, when those benefits were provided, had been a registered worker, had not, since he last became a registered worker, ceased to be an employee of that employer but had ceased to be a worker;
 - (ii) was, when those benefits were provided, a registered worker; or
 - (iii) was the personal representative of an employee who, at the date of his death, had been a registered worker, had not, since he last became a registered worker, ceased to be an employee of that employer but had ceased to be a worker or was the personal representative of an employee who, at the date of his death, was a registered worker.

the Board shall, upon application therefor made in writing within three months after the second appointed day, pay to that employer such amount as would have been payable to him had the amendments set out in Schedule 4 (6) been in force when those benefits were provided as if—

- (c) where relevant, that employer had been a registered employer and the application had been made by him as a registered employer; and

(d)

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(d) the amendments set out in Schedule 4 (1) had been in force for the purpose of calculating that amount.

(2) Notwithstanding subsection (1), any amount that would, but for this subsection, be payable to an employer under that subsection in respect of a period of service of an employee or registered worker, shall be reduced by any long service payment paid by reference to the same period of service of that employee or registered worker.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

- (1) (a) Section 3, matter relating to Part IV—
Omit “s. 14”, insert instead “ss. 14, 14A”.
- (b) Section 3, matter relating to Part V—
Omit “19”, insert instead “19D”.
- (2) Section 4 (1), definition of “building and construction work”—
- (a) Omit “for which a rate of pay is fixed by an award, being work”.
- (b) From paragraph (a), omit “or builders’ labourer”, insert instead “, lofty crane driver, electrician or builders’ labourer, being work for which a rate of pay is fixed by an award, or of the kind usually performed by a construction labourer, being work for which a rate of pay is fixed by a prescribed award”.

SCHEDULE

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (c) From paragraph (b), omit “by”, insert instead “under a contract of employment by”.
- (d) In paragraph (b), after “paragraph (a)”, insert “or as a clerk of works or construction supervisor”.
- (e) After “work” where lastly occurring, insert “or work which, under that section, the Committee has determined shall be deemed not to be building and construction work”.

(3) Section 4 (1), definition of “employers’ register”—

After the definition of “Committee”, insert :—

“employers’ register” means the register kept by the Board under section 19A (1);

(4) Section 4 (1), definition of “ordinary hours”—

- (a) From paragraph (a), omit “or”.
- (b) From paragraph (b), omit “kind;”, insert instead “kind; or”.
- (c) After paragraph (b), insert :—
 - (c) where the work is not work for which a rate of pay is fixed by an award—
 - (i) except as provided in subparagraph (ii)—such of the eight hours on each working day; or

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*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (ii) in respect of any kind of work specified in the regulations—such of the prescribed number of hours on each working day,

between the hours of 6 a.m. and 6 p.m. as attract the lower or lowest rate of pay for the performance of that kind of work;

- (5) Section 4 (1), definition of “registered employer”—

After the definition of “register”, insert :—

“registered employer” means a person whose name is entered in the employers’ register in respect of an employee;

- (6) Section 4 (1), definition of “second appointed day”—

After the definition of “regulations”, insert :—

“second appointed day” means the day appointed and notified under section 2 (3) of the Building and Construction Industry Long Service Payments (Amendment) Act, 1976;

- (7) Section 4 (1), definition of “worker”—

- (a) Omit “under a contract of employment, or who, under any other contract, being a contract for labour only or substantially for labour only”, insert instead “under a contract, whether or not a contract of employment”.

- (b) Omit “any such contract”, insert instead “a contract”.

SCHEDULE

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SCHEDULE 1—*continued.*

AMENDMENT TO PART I OF THE PRINCIPAL
ACT—*continued.*

- (c) After "Act" where firstly occurring, insert ", other than a prescribed Act,".
- (8) Section 4 (2) (b)—
Omit "for labour only or substantially for labour only".
- (9) Section 4 (2) (c)—
Omit ", being a contract for labour only or substantially for labour only,".

SCHEDULE 2.

Sec. 5.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

- (1) (a) Section 10 (1) (b) (iii)—
After "certified", insert "in writing".
- (b) Section 10 (1) (d)—
Omit "section 14 (3) or (6)", insert instead "this Act".
- (c) Section 10 (3)—
After "apply" wherever occurring, insert ", in a form approved by the Board,".
- (2) (a) Section 11 (1) (a)—
Omit "and, where he performs building and construction work on part of any working day for one employer and on another part or other parts

SCHEDULE

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL
ACT—*continued.*

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)", insert instead "particulars of which are required to be shown in a return under section 14, whether he performs that work for one or more than one employer".

(b) Section 11 (1) (c)—

After "twenty", insert "(disregarding any fraction)".

(c) Section 11 (1) (c)—

Omit "or".

(d) Section 11 (1) (d)—

Omit "industry.", insert instead "industry;".

(e) Section 11 (1) (e), (f), (g), (h)—

After section 11 (1) (d), insert :—

(e) in respect of the period in whole months referred to in paragraph (c), be so credited pursuant to paragraph (b) (iii) with any day's service in the building and construction industry unless that day is the fifth or a subsequent day on which he is absent, as referred to in paragraph (b) (iii), from his work in the building and construction industry during that period;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL
ACT—*continued.*

- (f) in respect of a year referred to in paragraph (d), be so credited pursuant to paragraph (b) (iii) with any day's service in the building and construction industry unless that day is the eleventh or a subsequent day on which he is absent, as referred to in paragraph (b) (iii), from his work in the building and construction industry during that year;

- (g) in respect of the period commencing on the second appointed day and ending on the next following thirtieth day of June, be so credited pursuant to paragraph (b) (iii) with more days' service in the building and construction industry than equals the number that bears to one hundred and ten (disregarding any fraction) the same proportion as the period, in whole months, commencing on the second appointed day and ending on the next following thirtieth day of June bears to twelve; or

- (h) in respect of any year ending on any thirtieth day of June subsequent to the thirtieth day of June referred to in paragraph (g), be so credited pursuant to paragraph (b) (iii) with more than one hundred and ten days' service in the building and construction industry.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL
ACT—*continued.*

(3) Section 12 (2), (3)—

At the end of section 12, insert :—

(2) Any person on whom a notice is served under subsection (1) may, within six months after the service of the notice, lodge with the Board an objection against the accuracy of the notice in relation to the number of days specified in the notice as being the number of days' service with which that person was credited in the register in respect of the year ended the thirtieth day of June next preceding the date on which the notice was served.

(3) The Board shall determine any such objection and the determination of the Board shall, subject to any determination made by the Committee under section 13, be final and conclusive.

(4) (a) Section 13 (1) (a) (i)—

Omit "building or construction work", insert instead "building and construction work".

(b) Section 13 (1) (a) (i)—

After "4 (1)", insert "or any work specified in the determination, performed or to be performed under a contract of employment, is or is not building and construction work performed or to be performed by any of the persons referred to in paragraph (b) of that definition".

(c) Section 13 (1) (a) (ii)—

Omit "subparagraph (i).", insert instead "subparagraph (i)".

SCHEDULE

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(Amendment).*

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL
ACT—*continued.*

(d) Section 13 (1) (a1)—

After section 13 (1) (a), insert :—

- (a1) that any building and construction work specified in the determination shall be deemed not to be building and construction work if that work is performed under a contract, not being a contract of employment, and, in the opinion of the Committee, involves a minor use of labour;

(e) Section 13 (2A)—

After section 13 (2), insert :—

- (2A) An application for a determination under subsection (1) in relation to any work (whether performed on, before or after the second appointed day) may be made by the Board at any time.

(f) Section 13 (3)—

Omit “seven”, insert instead “fourteen”.

(g) Section 13 (3)—

Omit “may appear before and be heard by the Committee before it makes its determination”, insert instead “may, if he so requests by an instrument in writing lodged with the Chairman of the Committee not later than two days before that date, appear and be heard on that date and at that place with respect to the application”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL
ACT—*continued.*

(h) Section 13 (3A)—

After section 13 (3), insert :—

(3A) A person who is entitled under subsection (3) to appear and be heard with respect to an application for a determination may so appear before and be heard by the Committee or, where the Committee so determines, by any two or more members of the Committee appointed by the Committee for the purpose, but the determination of the application shall be made by the Committee at a meeting at which a quorum is present.

(i) Section 13 (5)—

After “determination” where firstly occurring, insert “, other than a determination made pursuant to an application made under subsection (2A),”.

SCHEDULE 3.

Sec. 5.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) (a) Section 14 (4) (b) (iii)—

After “hours”, insert “or, where that work was not performed during ordinary hours, the amount that would have been payable to that worker in respect of the performance of that work if the hours during which it was performed had been ordinary hours”.

SCHEDULE

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(Amendment).*

SCHEDULE 3—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

(b) Section 14 (4) (e)—

Omit the paragraph, insert instead :—

- (e) be signed by the employer making the return or by some person authorised by that employer to sign the return.

(c) Section 14 (7) (b) (iii)—

After “hours”, insert “or, where that work was not performed during ordinary hours, the amount that would have been payable to that worker in respect of the performance of that work if the hours during which it was performed had been ordinary hours”.

(d) Section 14 (7A)—

After section 14 (7), insert :—

(7A) A return lodged under subsection (3) or (6) (d) and purporting to be signed by a person authorised by an employer to do so shall be deemed to have been signed by a person so authorised unless the contrary is proved.

(e) Section 14 (8A), (8B)—

After section 14 (8), insert :—

(8A) It is a sufficient defence to a prosecution for an offence arising under subsection (3) or (6) committed by an employer by reason of his failure to include in a return relating to a month particulars of building and construction work performed by a worker (not being a worker

SCHEDULE

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SCHEDULE 3—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

employed by that employer under a contract of employment) and to pay long service charges in respect of that work if that employer proves that there was one or more than one other employer in relation to that work and that he used all due diligence to obtain those particulars from that other employer or those other employers before the due date for the lodging of a return for that month and if, in a return for that month lodged by that firstmentioned employer with the Board, he informed the Board of the name of that other employer or the names of those other employers for whom that worker performed that work and of the steps taken by him to obtain those particulars.

(8B) Any amount due in respect of long service charges under this section and not paid before the due date shall bear interest at the prescribed rate and any such interest shall be deemed to form part of the unpaid long service charges and may be recovered as an amount due in respect of long service charges.

(f) Section 14 (9), (9A), (9B), (9C)—

Omit section 14 (9), insert instead :—

(9) Where—

(a) during any month building and construction work was performed by a worker (in this subsection referred to

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

as “the principal worker”) for another person pursuant to a contract, other than a contract of employment—

- (i) with that other person (whether or not other workers, under a contract of employment with the principal worker, assisted in performing that work); or
 - (ii) as a member of a partnership or a butty gang; and
- (b) the principal worker, before commencing that work, gave to that other person an undertaking, in a form approved by the Board, that he would make a return under this section in respect of that work,

then, notwithstanding subsection (3) or (6), that other person is not, if he and the principal worker comply with any conditions prescribed in respect of any such undertakings, 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 any 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) (iv) or subsection (7) (b) (iv), as the case may be.

(9A) A person to whom an undertaking referred to in subsection (9) (b) is given shall retain that undertaking for a period of three years after it was given.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

(9B) Where a principal worker referred to in subsection (9) gives an undertaking referred to in subsection (9) (b) in respect of any building and construction work, the provisions of this section relating to the making by an employer of a return in respect of that work and the payment of long service charges by an employer in respect of that work apply to and in respect of that principal worker in all respects as if, as well as being the employer of workers, if any, who performed that work for him under a contract of employment, he were the employer of each other person, including himself, who performed that work pursuant to the contract referred to in subsection (9) (a) otherwise than as a worker under a contract of employment and as if he paid or was liable to pay moneys in respect of the performance of that work by each such other person.

(9C) Where a principal worker referred to in subsection (9) who has not given an undertaking referred to in subsection (9) (b) makes a return in respect of any work referred to in subsection (9) and pays long service charges in respect of that work, that principal worker shall be deemed to have given such an undertaking in respect of that work.

(2) Section 14A—

After section 14, insert :—

14A. (1) A person, referred to in section 4 (2) (c) as a contractor, who performs any building and construction work for any other employer shall, unless

Contractor's
obligation
to provide
information
to employer.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

he has, under section 14 (9) (b), given an undertaking to that other employer in respect of that work, give to that other employer on demand made at any time after the end of the month in which that work was performed—

- (a) particulars as to whether he himself performed any of that work on any working day during that month and, if so, particulars of that work and of the working days during that month on which or on any part of which he performed it; and
- (b) particulars referred to in section 14 (4) (b) in respect of himself, if he performed any of that work, and in respect of any other workers who performed any of that work.

Penalty : \$1,000.

(2) A person who has made an application to the Committee under section 13 in respect of any work performed by him does not, if the application has not been determined or withdrawn, contravene subsection (1) in relation to that work.

(3) Where—

- (a) a person on whom a demand referred to in subsection (1) has been made has made an application to the Committee under section 13 in respect of any work performed by him; and

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

- (b) the Committee has determined that that work is building and construction work,

that person shall, within fourteen days after the date on which the determination was made, give to the employer for whom he performed that work the particulars referred to in subsection (1) (a) and (b).

Penalty : \$1,000.

(4) An employer to whom particulars in respect of a worker are given pursuant to subsection (3) shall within fourteen days after the particulars are given to him—

- (a) lodge with the Board a return complying with subsection (5); and
- (b) pay to the Board, as long service charges, an amount equal to the prescribed percentage of the total of the amount, referred to in subsection (1) (b), shown in the return pursuant to subsection (5) (b).

Penalty : \$1,000.

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

- (a) comply with section 14 (4), paragraph (b) excepted; and
- (b) contain the particulars referred to in subsection (1) (a) and (b).

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

(6) A return lodged under subsection (4) and purporting to be signed by a person authorised by an employer to do so shall be deemed to have been signed by a person so authorised unless the contrary is proved.

Sec. 5.

SCHEDULE 4.

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 15 (1), (2), (2A), (2B)—

Omit section 15 (1), (2), insert instead :—

(1) In this Part, “ordinary pay”, in relation to a worker in respect of whom a long service payment is payable, means an amount equal to the dividend obtained by dividing by eleven his total emoluments for the last fifty-five working days with which he was credited in the register before that long service payment became payable.

(2) The reference in subsection (1) to the total emoluments of a worker for the last fifty-five working days with which he was credited in the register before a long service payment became payable is a reference to the sum of—

- (a) any returnable amounts that, in respect of that worker, are required to be included in a return in respect of any of those fifty-five days; and

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(b) where on any day of those fifty-five days that worker was 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—the amount which he was paid in respect of the leave for ordinary hours on that day; or

(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 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—the average daily pay of that worker for that day.

(2A) The reference in subsection (2) to the average daily pay of a worker for a day is a reference—

(a) where the worker is credited in the register, pursuant to section 11 (1) (a), with fifty-five days' service, or more—to an amount equal to the dividend obtained by dividing by fifty-five the total of the returnable

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

amounts that, in respect of that worker, are required to be included in returns in respect of the last fifty-five days' service with which that worker is so credited; or

- (b) where the worker is so credited with less than fifty-five days' service—to an amount equal to the dividend obtained by dividing by the number of days' service with which he is so credited the total of the returnable amounts that, in respect of that worker, are required to be included in returns in respect of the number of days' service with which that worker is so credited.

(2B) In subsections (2) and (2A), "returnable amounts" means any amounts referred to in section 14 (4) (b) (iii) or (iv), section 14 (7) (b) (iii) or (iv) or section 14A (1) (b) or in section 11 (4) (b) (iii) or (iv) or section 11 (8) (b) (iii) or (iv) of the Building and Construction Industry Long Service Payments (Amendment) Act, 1976.

- (2) Section 16 (1), (3) (b)—

Omit "paragraph (a) of the definition of 'ordinary pay' in section 15 (1)" wherever occurring, insert instead "the definition of 'ordinary pay' in section 15".

- (3) (a) Section 17 (1)—

Omit the subsection.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

**AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.***

(b) Section 17 (2) (d)—

After “worker,” insert “has, pursuant to section 11 (1), a credit in the register of at least fifty-five days’ service,”.

(c) Section 17 (2) (e)—

Omit the paragraph.

(d) Section 17 (2) (f)—

Omit “who is not a foundation worker, who has a credit”, insert instead “who has, pursuant to section 11 (1), a credit”.

(e) Section 17 (2)—

After “may apply”, insert “, in a form approved by the Board,”.

(f) Section 17 (3) (c)—

Omit “completed five or more years’ service”, insert instead “a credit in the register, pursuant to section 11 (1), of at least fifty-five days’ service”.

(g) Section 17 (3) (d)—

After “worker”, insert “, had, immediately before his death, a credit in the register, pursuant to section 11 (1), of at least fifty-five days’ service”.

(h) Section 17 (3)—

After “may apply”, insert “, in a form approved by the Board,”.

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(i) Section 17 (3A)—

After section 17 (3), insert :—

(3A) A person shall not in any application made under subsection (2) or (3) make a statement that is false or misleading in a material particular.

Penalty : \$1,000.

(j) Section 17 (4) (b)—

Omit the paragraph, insert instead :—

(b) in respect of any registered worker belonging to a class or description of registered workers specified in a regulation made for the purpose of this section, to such age, being an age under sixty-five years, as may be specified in the regulation as the prescribed age.

(k) Section 17 (5)—

Omit “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”, insert instead “calculated in accordance with the following formula :—

$$\text{LSP} = \frac{S}{220} \times \frac{13}{15} \times \text{OP}''.$$

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(1) Section 17 (6)—

After “foundation worker”, insert “, that long service payment is the first such payment payable in respect of that registered worker”.

(m) Section 17 (6) (b), (c)—

Omit the paragraphs, insert instead :—

(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 registered worker has completed more than five years' service as a worker, otherwise than as an apprentice, shall be further increased in accordance with the following formula :—

$$I = \frac{S - 1100}{220} \times \frac{13}{75} \times OP; \text{ or}$$

(c) subsection (2) (d), under subsection (2) (f) in respect of a foundation worker or under subsection (3) (d), the payment under subsection (5) shall be increased by an amount calculated in accordance with the following formula :—

$$I = \frac{S}{220} \times \frac{13}{75} \times OP.$$

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(n) Section 17 (6A)—

After section 17 (6), insert :—

(6A) For purposes of the formulae in subsections (5) and (6)—

LSP represents the amount of the long service payment;

I represents the amount of the further increase or the increase, as the case may be;

S represents the number of days' service with which the registered worker in respect of whom the application is made is credited in the register at the date on which the entitlement to the long service payment first arose or, if the application is made under subsection (2) and the worker so requests, at the date of his application;

OP represents the ordinary pay of the registered worker in respect of whom the application is made.

(o) Section 17 (7)—

Omit the subsection, insert instead :—

(7) A registered worker is not entitled—

(a) to apply for or to be paid a long service payment in respect of any day's service credited to him in the register if a long

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*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

service payment or a payment under section 19D has been made in respect of that day; or

- (b) to any benefits under subsection (6) if a payment under section 19D has been made to an employer in respect of that registered worker.

(p) Section 17 (8)—

Omit “, (e)”.

(4) Section 18—

Omit the section, insert instead—

18. (1) Where a registered worker has not been credited with any service in the register for a period of four consecutive years, the Board shall remove the name of that registered worker from the register and thereupon—

Removal of names from register.

- (a) that registered worker shall cease to be a registered worker; and
- (b) that registered worker or his personal representative shall not be entitled to apply for or be paid any long service payment calculated by reference to that service.

(2) Nothing in subsection (1) prevents a person whose name has been removed from the register in accordance with that subsection from subsequently becoming a registered worker.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(3) Notwithstanding subsection (1), an employer is entitled to be paid, in respect of a registered worker whose name has been removed from the register pursuant to that subsection, any amount that he would have been entitled to be paid under section 19D if the name of that registered worker had not, under that subsection, been removed from the register.

(5) (a) Section 19 (3)—

Omit “the service factor applicable to that worker and used for calculating that long service payment”, insert instead “that long service payment”.

(b) Section 19 (4)—

Omit the subsection, insert instead :—

(4) Where, under section 19D of this Act or section 12 of the Building and Construction Industry Long Service Payments (Amendment) Act, 1976, a payment is made to an employer in respect of an employee by reference to a period of service of that employee, that employee shall, for the purposes of subsection (3), be deemed to be a registered worker who has been paid a long service payment under this Act in respect of that period.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(6) Sections 19A, 19B, 19C, 19D—

After section 19, insert :—

19A. (1) The Board shall keep in such form **Employers'** and manner as it thinks fit a register of employers **register.** in which it shall cause to be entered—

- (a) the names of all employers who have applied in accordance with subsection (3) to have their names entered in that register and the name of each employee in respect of whom each such employer has so applied;
- (b) the date on which each such employer became a registered employer in respect of each employee in respect of whom he is a registered employer;
- (c) in respect of each employee, being an employee referred to in subsection (3) (a), in respect of whom a registered employer is registered in that register, the number of working days on which or on any part of which that employee was, after the employer became a registered employer in respect of that employee, a worker employed under a contract of employment by that employer; and
- (d) such other information relating to employers and their employees as the Board deems necessary for the purpose of administering this Act.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(2) The reference in subsection (1) (b) to the date on which an employer became a registered employer in respect of an employee is a reference to the date on which that employer applied to have his name entered in the employers' register in respect of that employee or to such earlier date as the Board may, under subsection (4), fix in respect of that employer or in respect of any class of employers to which that employer belongs.

(3) An employer of an employee may at any time apply, in a form approved by the Board, to the Board to have his name entered in the employers' register as the employer of that employee if that employee—

- (a) is at that time a worker but is not a registered worker; or
- (b) has been a registered worker employed by that employer, has not, since he last became such a registered worker, ceased to be an employee of that employer but has ceased to be a worker.

(4) Where it considers that special circumstances warrant its doing so, the Board may, in respect of any employer or class of employers, fix, for the purpose of subsection (2), an earlier date than the date on which that employer or an employer belonging to that class applied to have his name entered in the employers' register.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

19B. For the purposes of section 19A (1) (c), a registered employer shall, in respect of any worker (being a worker referred to in section 19A (3) (a)) in respect of whom he is a registered employer, be credited in the employers' register with one day's service in respect of that worker—

- (a) for each working day (being a day on or after the date, as shown in that register, on which that employer became a registered employer in respect of that worker) on which that worker performs for that employer building and construction work under a contract of employment particulars of which are shown in a return made by that employer under section 14; and
- (b) for each working day (being a day on or after the date, as shown in that register, on which that employer became a registered employer in respect of that worker) on which that worker is absent from his work as a worker under a contract of employment with that employer—
 - (i) on any paid leave, other than annual leave, granted by that employer;
 - (ii) on account of incapacity arising out of injury, within the meaning of section 6 (1) of

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

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 second appointed day and ending on the next following thirtieth day of June, be so credited with more days' service in respect of that worker than equals the number that bears to two hundred and twenty (disregarding any fraction) the same proportion as the period, in whole months, commencing on the second appointed day and ending on the next following thirtieth day of June bears to twelve;
- (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 respect of that worker;

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

- (e) in respect of the period, in whole months, referred to in paragraph (c), be so credited pursuant to paragraph (b) (iii) with any day's service in respect of that worker unless that day is a day after the number of days on which that worker is absent, as referred to in paragraph (b) (iii), from his work in the building and construction industry that bears to ten (disregarding any fraction) the same proportion as the period, in whole months, commencing on the second appointed day and ending on the next following thirtieth day of June bears to twelve;
- (f) in respect of a year referred to in paragraph (d), be so credited pursuant to paragraph (b) (iii) with any day's service in respect of that worker unless that day is the eleventh or a subsequent day on which he is absent, as referred to in paragraph (b) (iii), from his work in the building and construction industry during that year;
- (g) in respect of the period referred to in paragraph (c), be so credited pursuant to paragraph (b) (iii) with more days' service in respect of that worker than equals the number that bears to one hundred and ten (disregarding any fraction) the same proportion as the period, in whole months, commencing

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*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

on the second appointed day and ending on the next following thirtieth day of June bears to twelve; or

- (h) in respect of a year referred to in paragraph (d), be so credited pursuant to paragraph (b) (iii) with more than one hundred and ten days' service in respect of that worker.

Notice to employers of service of certain employees.

19c. (1) 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 employer in respect of a worker referred to in section 19A (3) (a) a notice specifying—

- (a) in the case of notices served as soon as practicable after the thirtieth day of June next following the second appointed day—the number of days' service in respect of that worker, as shown in the employers' register, with which that registered employer has, in accordance with section 19B, been credited in respect of the period commencing on the second appointed day and ending on that thirtieth day of June; and
- (b) in the case of subsequent notices—the number of days' service in respect of that worker, as shown in the employers' register, with which that registered employer has, in accordance with section 19B, been credited in

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

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 respect of that worker with which that
registered employer has, in accordance with
section 19B, been credited.

(2) Any person on whom a notice is
served under subsection (1) may, within six
months after the service of the notice, lodge with
the Board an objection against the accuracy of
the notice in relation to the number of days
specified in the notice as being the number of
days' service in respect of a worker with which
that person was credited in the employers' register
in respect of the period or year, as the case may
be, ended the thirtieth day of June next preceding
the date on which the notice was served.

(3) The Board shall determine any
such objection and the determination of the
Board shall, subject to any determination made
by the Committee under section 13, be final and
conclusive.

(4) The Board may, at such times as
it thinks fit, serve on a registered employer a
notice requiring him to inform the Board, within
such time as may be specified in the notice, not
being less than one month, whether a person
specified in the notice as the employee of that
registered employer is an employee of that

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

registered employer and, if so, whether that registered employer desires to have his name retained in the employers' register as the employer of that person.

(5) If a registered employer does not comply with a notice, served on him under subsection (4), by lodging with the Board a statement, signed by that employer or by some person authorised by him to make the statement, that that registered employer is, at the date of the statement, the employer of the person specified in the notice as the employee of that registered employer and that he desires to have his name retained in the employers' register as the employer of the person so specified, the Board shall remove the name of that registered employer, as the employer of that employee, and any other particulars relating to that registered employer, as the employer of that employee, from the employers' register.

(6) A notice under subsection (4) may be included in a notice under subsection (1).

(7) A statement lodged under subsection (5) and purporting to be signed by a person authorised by an employer to do so shall be deemed to have been signed by a person so authorised unless the contrary is proved.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

19D. (1) Where—

- (a) a person applies for and takes or receives any benefits referred to in section 19 (1) in respect of any period of service in the building and construction industry; and

Payments to certain employers providing benefits under Long Service Leave Act, 1955.

(b) that person—

- (i) is an employee in respect of whom the employer who provided those benefits was, when those benefits were provided, a registered employer;
- (ii) was, when those benefits were provided, a registered worker; or
- (iii) is the personal representative of an employee in respect of whom the employer who provided those benefits was, when that person died, a registered employer or is the personal representative of a person who, when he died, was a registered worker,

the Board shall, upon application therefor made in writing within three months after those benefits were provided—

- (c) where that person is an employee referred to in paragraph (b) (i)—by the employer who is the registered employer in respect of that person;

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

- (d) where that person is a registered worker—by his employer; or
- (e) where that person is a personal representative referred to in paragraph (b) (iii)—by the employer who provided those benefits,

pay to that employer an amount calculated in accordance with the following formula :—

$$P = \frac{S}{220} \times \frac{13}{15} \times OP,$$

where—

P represents the amount to be paid to that employer;

S represents, where the person in respect of whom the benefits were provided was—

- (i) a registered worker employed by that employer at the time those benefits accrued due—the number of successive working days with which that worker was credited pursuant to section 11 (1) in the register immediately before that time, being days on which that worker was, immediately before that time, employed under a contract of employment by that employer;

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

(ii) a worker referred to in section 19A (3) (a) employed under a contract of employment by that employer at the time those benefits accrued due—the number of successive working days with which that employer was credited in respect of that worker in the employers' register immediately before that time; or

(iii) an employee referred to in section 19A (3) (b) employed by that employer at the time those benefits accrued due—the number of successive working days with which that employee was credited pursuant to section 11 (1) in the register immediately before that employee ceased to be a worker, being days on which he was a registered worker employed under a contract of employment by that employer,

increased, where one of those successive working days was a working day during the month in which the appointed day occurred, by 275 ;

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

OP represents, where the person in respect of whom those benefits were provided was—

- (i) a worker (whether or not a registered worker) at the time those benefits accrued due—the ordinary pay that would have been applicable to that worker at that time if a long service payment had been payable to that person as a worker at that time; or
- (ii) an employee referred to in section 19A (3) (b) at the time those benefits accrued due—the weekly award pay for work performed during ordinary hours that would have been applicable to that employee at that time if he had been employed in the same kind of work as the work in which he was employed immediately before he ceased to be a worker.

(2) Notwithstanding any other provision of this section, an employer is not entitled to be paid under this section—

- (a) a greater amount in respect of an employee than the value of the benefits, referred to in section 19 (1), provided by that employer in respect of that employee; and

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL
ACT—*continued.*

- (b) any amount in respect of any day's service with which a worker has been credited in the register if a long service payment or a payment under this section has been made in respect of that day.

SCHEDULE 5.

Sec. 5.

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

(1) Section 24—

At the end of section 24, insert "Penalty : \$1,000."

(2) (a) Section 26 (a)—

Omit "or".

(b) Section 26 (b) (ii)—

Omit "business.", insert instead "business; or".

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL
ACT—*continued.*

(c) Section 26 (c)—

After section 26 (b), insert :—

(c) where it is addressed to a person in his capacity as an employer—

(i) by delivering it to the place of abode or business of the employer last known to the Board or Committee, as the case may be, and leaving it there with some person for the person to whom it is addressed; or

(ii) by posting it by certified mail in an envelope duly stamped and addressed to that person at his place of abode or business last known to the Board or Committee, as the case may be,

(d) Section 26—

After “(b) (ii)”, insert “or (c) (ii)”.

(3) Section 29 (3), (4), (5), (6), (7)—

After section 29 (2), insert :—

(3) For the purposes of subsections (1) and (2), a long service charge is due and payable by a person in respect of work whether or not a return is lodged by that person under this Act in respect of that work.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL
ACT—*continued.*

(4) Where from returns furnished under this Act or from such other information as satisfies the Board, it appears to the Board—

- (a) that any work that has been performed (whether on, before or after the second appointed day) is building and construction work;
- (b) that that work was performed by a worker for an employer;
- (c) that that employer was liable to pay long service charges to the Board in respect of that work; and
- (d) that those long service charges have not been paid,

the Board may estimate and make an assessment of the amount of long service charges that in its opinion are due by that employer in respect of that work.

(5) The Board shall cause notice of the assessment to be served on the employer to whom the assessment relates.

(6) In any proceedings before a court for the recovery of a debt referred to in subsection (1), a certificate purporting to be signed by the Chairman of the Board certifying that an assessment has been made under this section on a person specified in the assessment as the employer by whom the amount assessed is due and specifying the amount assessed shall be admissible in evidence and be evidence that the person so specified is indebted to the Board for the amount assessed.

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL
ACT—*continued.*

(7) Where in any proceedings before a court for the recovery of a debt referred to in subsection (1) a certificate referred to in subsection (6) is admitted in evidence and the person specified in the certificate as the employer by whom the amount assessed is due disputes that the work in respect of which the assessment is made is building and construction work, the court shall adjourn those proceedings until a determination is made under section 13 by the Committee as to whether or not that work is building and construction work.

(4) (a) Section 37 (1) (b)—

After “documents”, insert “and any undertaking referred to in section 14 (9) (b)”.

(b) Section 37 (1) (b)—

Omit “and” where secondly occurring.

(c) Section 37 (1) (b1)—

After section 37 (1) (b), insert :—

(b1) where under section 24 the prescribed books and records referred to in that section may be kept by an employer in a form otherwise than in the English language, require that employer to provide, at such time and place as that person may specify, a copy of those books

SCHEDULE

*Building and Construction Industry Long Service Payments
(Amendment).*

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL
ACT—*continued.*

or records, or any part of them specified
in the requirement, translated into the
English language; and

(5) Section 39 (2)—

At the end of section 39, insert :—

(2) A prosecution for an offence under any of the provisions of this Act may be commenced at any time within one year after the Board first becomes aware of the commission of the offence.

(6) Section 40 (3)—

After section 40 (2), insert :—

(3) The regulations may make provisions that differ in their application according to time, place or circumstances or to any other factors specified in the regulations.
