

**BUILDING AND CONSTRUCTION INDUSTRY LONG
SERVICE PAYMENTS (AMENDMENT) ACT, 1980,
No. 123**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 123, 1980.

An Act to amend the Building and Construction Industry Long Service Payments Act, 1974, to make further provision for long service payments to workers engaged in the building and construction industry; and to enact special provisions with respect to foundation workers and certain employers.
[Assented to, 18th November, 1980.]

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 :—

Short title. **1.** This Act may be cited as the "Building and Construction Industry Long Service Payments (Amendment) Act, 1980".

**Commence-
ment.** **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsections (1) and (3), this Act 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.

(3) Section 5, in its application to Schedule 1 (1) (a), and Schedule 1 (1) (a) shall be deemed to have commenced on 27th December, 1974.

**Principal
Act.** **3.** The Building and Construction Industry Long Service Payments Act, 1974, is referred to in this Act as the Principal Act.

Schedules. **4.** This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SPECIAL PROVISIONS.

**Amendment
of Act No.
98, 1974.** **5.** The Principal Act is amended in the manner set forth in Schedule 1.

**Special
provisions.** **6.** Schedule 2 has effect.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of “building and construction industry”—

(i) After paragraph (a), insert :—

(a1) swimming pools;

(a2) fences;

(ii) In paragraph (i), after “for use in”, insert “or in conjunction with”.

(b) Section 4 (1), definition of “building and construction work”—

(i) In paragraph (a), after “construction labourer”, insert “or plant operator”.

(ii) Omit “but does not include work which, under section 13”, insert instead “and includes work in any other industry performed in New South Wales, being work which is referred to in paragraph (a) or (b) and which, under section 13, has been determined to be building and construction work, but does not include work which, under that section”.

(c) Section 4 (1), definition of “industrial agreement”—

After the definition of “Fund”, insert :—

“industrial agreement” means an industrial agreement 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;

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 4 (1), definition of “third appointed day”—

After the definition of “second appointed day”, insert :—

“third appointed day” means the day appointed and notified under section 2 (2) of the Building and Construction Industry Long Service Payments (Amendment) Act, 1980;

(e) Section 4 (5), (6)—

After section 4 (4), insert :—

(5) For the purpose of this Act, work performed by a person outside New South Wales shall be deemed to be building and construction work if—

- (a) that work would, if it were performed in New South Wales, be building and construction work; and
- (b) the employer of that person has elected, by notice in writing to the Board, to pay long service charges to the Board in respect of that work and has not, by such a notice, revoked that election.

(6) For the purpose of this Act, building and construction work performed by a worker in New South Wales shall be deemed not to be building and construction work if—

- (a) the employer of that worker applies to the Board for exemption from paying long service charges in respect of that work;
- (b) that employer satisfies the Board that he contributes to a like scheme relating to the payment of long service charges in a Territory of the Commonwealth or in a State

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

other than New South Wales and that he pays or is required to pay long service charges in that Territory or other State in respect of that work; and

- (c) the Board has, by notice in writing to that employer, granted the exemption and has not, by such a notice, revoked the exemption.

(2) Section 10 (1) (b1)—

After section 10 (1) (b), insert :—

- (b1) where the provisions of clause 3 of Schedule 2 to the Building and Construction Industry Long Service Payments (Amendment) Act, 1980, so require, a statement that the name of a registered worker is entered in the register as the name of a foundation worker;

(3) (a) Section 11 (1) (a)—

Omit “and” where lastly occurring.

(b) Section 11 (1) (b) (iii)—

Omit “work;”, insert instead “work;”.

(c) Section 11 (1) (b1), (b2), (b3)—

After section 11 (1) (b), insert :—

- (b1) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker and on or after the third appointed day) on which he is absent from his work as a worker under

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- a contract (other than a contract of employment) on account of illness or 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;
- (b2) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker and on or after the third appointed day) on which he does not perform paid work of any kind, if—
- (i) he was employed as a worker under a contract of employment and that contract was terminated by his employer;
 - (ii) since the termination of that contract, he has not performed paid work of any kind;
 - (iii) the period that, as at that day, has elapsed since the termination of that contract does not exceed 4 years; and
 - (iv) had he been employed as a worker on that day, he would have been absent from his work on account of illness or 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; and
- (b3) 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

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

absent from, and is not required to be present at, his work under a contract of employment by reason that the award or any industrial agreement relating to his work provides that ordinary working hours may be worked on 9 days per fortnight,

(d) Section 11 (1) (e1)—

After section 11 (1) (e), insert:—

(e1) in respect of the period commencing on the third appointed day and ending on the next following thirtieth day of June, be so credited pursuant to paragraph (b1) or (b2) 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 or would have been absent, as referred to in paragraph (b1) or (b2), as the case may be, from his work in the building and construction industry during that period;

(e) Section 11 (1) (f)—

After "paragraph (b) (iii)" where firstly occurring, insert ", (b1) or (b2)".

(f) Section 11 (1) (f)—

Omit "he is absent, as referred to in paragraph (b) (iii)", insert instead "he is or would have been absent, as referred to in paragraph (b) (iii), (b1) or (b2), as the case may be".

(g) Section 11 (1) (g)—

Omit "or".

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(h) Section 11 (1) (h)—

Omit “industry.”, insert instead “industry;”.

(i) Section 11 (1) (i), (j), (k)—

After section 11 (1) (h), insert :—

- (i) in respect of the period commencing on the third appointed day and ending on the next following thirtieth day of June, be so credited pursuant to paragraph (b1) or (b2) 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 third appointed day and ending on the following thirtieth day of June bears to twelve;
- (j) in respect of any year ending on any thirtieth day of June subsequent to the thirtieth day of June referred to in paragraph (i), be so credited pursuant to paragraph (b1) or (b2) with more than one hundred and ten days’ service in the building and construction industry; or
- (k) in respect of the period commencing on the appointed day and ending on the third appointed day, be so credited pursuant to paragraph (b3) with any day’s service in the building and construction industry unless—
 - (i) that day does not precede any day in respect of which a long service payment or a payment under section 19D has been made; and

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(ii) he applies to the Board to be so credited within 1 month after the third appointed day or within such longer period as the Board may in any particular case allow.

(j) Section 11 (2)—

Omit “acordance”, insert instead “accordance”.

(k) Section 11 (3), (4)—

After section 11 (2), insert :—

(3) For the purposes of section 10 (1) (e), a plant operator whose name is entered in the register pursuant to an application made within 1 month after the third appointed day or within such longer period as the Board may in any particular case allow 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 so entered in the register with the prescribed number of days’ service in the building and construction industry if—

(a) on any working day during the month of January in 1979 he performed the work of a plant operator or was absent from his work as a plant operator 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 the Workers’ Compensation Act, 1926, being injury arising out of or in the

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- course of his employment in the work of a plant operator; 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 the work of a plant operator; or
- (b) on any working day before the month of January in 1979 he performed the work of a plant operator but does not meet the requirement referred to in paragraph (a) because, during that month—
- (i) he was unable to find work in the building and construction industry, whether or not he was temporarily employed in any other industry;
- (ii) he was temporarily employed outside the State in the building and construction industry; or
- (iii) he was unable to perform the work of a plant operator on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform the work of a plant operator.

(4) For the purposes of subsection (3), the prescribed number is the number obtained (disregarding any fraction) by multiplying by $18\frac{1}{3}$ the number of whole months in the period commencing on 1st January, 1979, and ending on the third appointed day.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) (a) Section 13 (1) (a2)—

After section 13 (1) (a1), insert :—

(a2) that any work specified in the determination is building and construction work if it is work—

- (i) in an industry other than the building and construction industry;
- (ii) referred to in paragraph (a) or (b) of the definition of “building and construction work” in section 4 (1); and
- (iii) performed by any person under a contract of employment, being a person who, in the opinion of the committee, is usually employed in the building and construction industry;

(b) Section 13 (1) (b) (i)—

After “building and construction industry”, insert “or any other industry”.

(c) Section 13 (3B)—

After section 13 (3A), insert :—

(3B) A determination made under this section by the Committee may relate to a specified class of work performed by or for any person, notwithstanding that the determination was made pursuant to an application in relation to work performed by or for a particular person.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 13 (4)—

Omit the subsection, insert instead :—

(4) A determination made under this section by the Committee—

- (a) where it is made on or after the third appointed day, shall be published in the Gazette or the New South Wales Industrial Gazette or, where it is made before that day, may be so published;
- (b) has effect on and from such date (being a date before or after the date on which or being the date on which the determination is made) as may be specified in the determination; and
- (c) is final and conclusive.

(e) Section 13 (7)—

After section 13 (6), insert :—

(7) All courts and persons acting judicially—

- (a) shall take judicial notice of a determination made or purporting to have been made under this section by the Committee and published in the Gazette or the New South Wales Industrial Gazette; and
- (b) shall, until the contrary is proved, presume that all conditions and steps precedent to the making of the determination have been complied with and performed.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) (a) Section 14 (1)—

Omit the subsection, insert instead :—

(1) In this section—

“month” means any month of January, February, March, April, May, June, July, August, September, October, November or December;

“prescribed period”, in relation to an employer, means—

(a) except as provided in paragraph (b)—a month; or

(b) such period (comprising a number of months) as the Board may, by an order served on that employer and for the time being in force, determine as the prescribed period in relation to that employer.

(b) Section 14 (3)—

Omit “An employer”, insert instead “Subject to subsection (4B), an employer”.

(c) Section 14 (3), (4) (b) (i), (4) (b) (ii)—

Omit “month” wherever occurring, insert instead “prescribed period”.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 14 (4A), (4B)—

After section 14 (4), insert :—

(4A) An employer who is required to lodge a return and pay long service charges under subsection (3) in respect of a prescribed period other than a month shall—

(a) lodge such provisional returns (if any) with the Board; and

(b) pay to the Board, as long service charges, such amounts (if any),

as the Board may direct by an order served on that employer and for the time being in force.

Penalty : \$1,000.

(4B) The long service charges which, but for this subsection, would be payable by an employer under subsection (3) in respect of a prescribed period shall be reduced by the amounts paid by the employer to the Board as long service charges under subsection (4A) (b) during that period, and if those amounts exceed the long service charges so payable, the amount of that excess shall be refunded by the Board or, if the Board so determines, further payments of long service charges by the employer shall be reduced by the amount of that excess.

(e) Section 14 (7A), (8)—

After “subsection (3)” wherever occurring, insert “, (4A)”.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(f) Section 14 (8A)—

Omit “month” wherever occurring, insert instead “prescribed period”.

(g) Section 14 (8C)—

After section 14 (8B), insert :—

(8C) The Board may, where it considers that special circumstances warrant its doing so in any particular case, direct—

(a) that the due date for payment of any long service charges be extended by such further period as may be specified in the direction;
or

(b) that any such charges may be paid in such instalments and at such times as may be specified in the direction.

and the direction shall, notwithstanding anything to the contrary in this section, have effect according to its tenor.

(h) Section 14 (9) (a)—

Omit “month”, insert instead “prescribed period”.

(i) Section 14 (10)—

Omit “mainenance”, insert instead “maintenance”.

(6) (a) Section 15 (2) (a)—

Omit “and”

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 15 (2) (b) (ii)—

Omit “that day.”, insert instead “that day;”.

(c) Section 15 (2) (c), (d)—

After section 15 (2) (b), insert :—

(c) where on any day of those fifty-five days that worker was absent from his work as a worker under a contract (other than a contract of employment) on account of illness or 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; and

(d) where on any day of those fifty-five days that worker did not perform paid work of any kind but, had he been employed as a worker, he would have been absent from his work on account of illness or 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.

(7) (a) Section 17 (2) (d)—

Omit “is a foundation worker,”.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 17 (2) (f), (3) (c)—

Omit “otherwise than as an apprentice” wherever occurring.

(c) Section 17 (3) (b)—

After “worker;”, insert “or”.

(d) Section 17 (3) (c)—

Omit “(b); or”, insert instead “(b),”.

(e) Section 17 (3) (d)—

Omit the paragraph.

(f) Section 17 (4)—

Omit “subsections (2) (d) and (3) (d)”, insert instead “subsection (2) (d)”.

(g) Section 17 (6) (c)—

Omit “, under subsection (2) (f) in respect of a foundation worker or under subsection (3) (d)”, insert instead “or subsection (2) (f)”.

(8) (a) Section 19B (a)—

Omit “and” where lastly occurring.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 19B (b) (iii)—

Omit “work,”, insert instead “work; and”.

(c) Section 19B (b1)—

After section 19B (b), insert :—

- (b1) 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, and is not required to be present at, his work as a worker under a contract of employment with that employer by reason that the award or any industrial agreement relating to his work provides that ordinary working hours may be worked on 9 days per fortnight,

(9) Section 19D (1)—

Omit “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;
- (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,

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

pay to that employer an amount calculated in accordance with the following formula :—”, insert instead “were provided or within such longer period as the Board may in any particular case allow, pay—

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

an amount calculated in accordance with the following formula :—”.

(10) Section 20 (8)—

Omit “with the approval of the Treasurer”.

(11) Section 26 (b) (ii), (c) (ii)—

Omit “by certified mail” wherever occurring.

(12) Section 30A—

After section 30, insert :—

30A. (1) Any person who is appointed after the third appointed day as an official manager, or as a receiver or manager of the property, of a company which was, at any time within the period of 3 years before his appointment, an employer of workers shall—

Receivers,
managers,
etc., to
give notice.

- (a) within 14 days after his appointment, serve on the Board notice in writing of his appointment;
and

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) within 14 days after he has lodged a statement of the affairs of the company with the Corporate Affairs Commission, lodge with the Board, a copy of that statement.

Penalty : \$1,000.

- (2) A reference in subsection (1) (b) to a statement of the affairs of a company is a reference—

(a) in relation to an official manager of the company—to a copy of the documents referred to in section 203A (7) of the Companies Act, 1961;
or

(b) in relation to a receiver or manager of the property of the company—to a copy of the documents referred to in section 193 (1) (c) (i) of the Companies Act, 1961.

- (3) Subsection (1) (a) does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager.

- (13) (a) Section 31 (1)—

Omit “which is an employer of workers”, insert instead “which was, at any time within the period of 3 years before his appointment as liquidator, an employer of workers”.

- (b) Section 31 (1A), (2), (2A), (3)—

Omit section 31 (2) and (3), insert instead :—

(1A) The liquidator shall lodge with the Board a statement of the affairs of the company in a form approved by the Board.

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Board shall, as soon as practicable after the statement is lodged with the Board—

- (a) notify the liquidator that the provisions of subsection (3) apply to him and specify in that notification 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; or
- (b) notify the liquidator that the provisions of subsection (3) do not apply to him.

(2A) The liquidator shall not, without the leave of the Board, part with any of the assets of the company until he has been so notified.

(3) Where the liquidator is notified in the terms referred to in subsection (2) (a), the liquidator—

- (a) 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
- (b) 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.

(c) Section 31 (9)—

After section 31 (8), insert :—

(9) In relation to a liquidator who had served notice of his appointment on the Board before the third appointed day but who had not been notified by

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the Board pursuant to subsection (2), as in force before that day, this section shall be read and construed as if the amendments made to this section by the Building and Construction Industry Long Service Payments (Amendment) Act, 1980, had not been made.

(14) (a) Section 37 (2)—

Omit “that subsection”, insert instead “subsection (1) (a) or (c)”.

(b) Section 37 (2A)—

After section 37 (2), insert :—

(2A) A person shall not neglect or fail to comply with a requirement made under subsection (1) (b) or (b1).

Penalty : \$1,000.

(15) Section 38A—

After section 38, insert :—

Certificate
evidence.

38A. A certificate purporting to be under the hand of a prescribed officer certifying—

- (a) that a person has or has not, on a date specified in the certificate, lodged with the Board a return under a provision of this Act so specified for a period so specified; or

Building and Construction Industry Long Service Payments (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) that a person has or has not, on a date specified in the certificate, paid to the Board the long service charges payable in respect of a worker so specified for a period so specified,

is admissible in evidence in any proceedings and is prima facie evidence of the matters stated therein.

SCHEDULE 2.

Sec. 6.

SPECIAL PROVISIONS.

1. Expressions used in this Schedule shall, except in so far as the context or subject-matter otherwise indicates or requires, have the same meanings respectively as in the Principal Act. Interpretation.

2. (1) In this clause, "relevant period" means the period commencing on the appointed day and ending immediately before the second appointed day. Payments to employers in respect of benefits provided under the Long Service Leave Act, 1955, to unregistered workers.

(2) Where—

(a) after the appointed day but before the third 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, being a period of service before the second appointed day; and

(b) that person—

(i) was, when those benefits were provided, a worker (other than a registered worker); or

(ii) was the personal representative of an employee who, at the date of his death, was such a worker,

the Board shall, upon application therefor made in writing within 3 months after the third appointed day or within such longer period as the Board may in any particular case allow, pay to that employer such amount as

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would have been payable to him had the amendments set out in Schedule 4 (6) to the Building and Construction Industry Long Service Payments (Amendment) Act, 1976, been in force when those benefits were provided as if—

- (c) that employer had been a registered employer during the relevant period and the application had been made by him as a registered employer;
- (d) that employer had been credited in the employers' register in respect of that person with the number of working days required by section 19A (1) (c) of the Principal Act; and
- (e) the amendments set out in Schedule 4 (1) to the Building and Construction Industry Long Service Payments (Amendment) Act, 1976, had been in force for the purpose of calculating that amount.

(3) Where—

- (a) an employer employed a person at any time during the relevant period under a contract of employment;
- (b) that person was an employee who, during that time, was a worker (other than a registered worker);
- (c) that employer is not entitled to make an application for a payment under subclause (2) in respect of that employee; and
- (d) that employer is, on the third appointed day, a registered employer in respect of that employee,

the Board may, notwithstanding anything to the contrary in section 19A of the Principal Act, fix a date during the relevant period as the date on which that employer became a registered employer in respect of that employee.

Certain
workers
entitled
to be
registered
as
foundation
workers.

3. (1) Where—

- (a) a registered worker (other than a foundation worker) applies to have his name entered in the register as the name of a foundation worker in accordance with subclause (3);
- (b) that registered worker became a registered worker, or applied to become a registered worker, on or before 30th June, 1975; and

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SCHEDULE 2—*continued.*

SPECIAL PROVISIONS—*continued.*

- (c) that registered worker was a worker before 1st February, 1975, but was not entitled to have his name entered in the register as the name of a foundation worker pursuant to section 10 (1) (b) of the Principal Act because, during that month—
- (i) he was unable to find work in the building and construction industry, whether or not he was temporarily employed in any other industry;
 - (ii) he was temporarily employed outside the State in the building and construction industry; or
 - (iii) he was unable to perform building and construction work on account of illness or 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 Board shall cause to be entered in the register a statement that the name of that registered worker is entered in the register as the name of a foundation worker.

(2) Subclause (1) (c) (iii) does not apply in the case of a registered worker who did not again become a worker before 1st February, 1976.

(3) A person may, within the period of 3 months after the third appointed day or within such longer period as the Board may in any particular case allow, apply, in a form approved by the Board, to the Board to have his name entered in the register as the name of a foundation worker pursuant to subclause (1).
