

**BUILDING AND CONSTRUCTION INDUSTRY LONG  
SERVICE PAYMENTS (AMENDMENT) ACT, 1982, No. 44**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 44, 1982.**

An Act to amend the Building and Construction Industry Long Service Payments Act, 1974, to constitute the Building and Construction Industry Long Service Payments Corporation and to transfer the assets and liabilities of, and the administration of, the Building and Construction Industry Long Service Payments Fund from the Builders Licensing Board to the Corporation. [Assented to, 5th May, 1982.]

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

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**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, 1982".

**Commencement.**

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

(2) Except as provided in subsection (1), 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.

**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.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Amendment of Act No. 98, 1974.**

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

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

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**Savings, transitional and other provisions.**

6. Schedule 2 has effect.

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**SCHEDULE 1.**

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT.**

(1) Section 3—

From the matter relating to Part II, omit "5", insert instead "4A".

(2) (a) Section 4 (1), definition of "Board"—

Omit the definition.

(b) Section 4 (1), definition of "Corporation"—

After the definition of "Committee", insert:—

"Corporation" means the corporation constituted by section 4A (1);

(c) Section 4 (1), definitions of "employers' register", "register"—

Omit "Board" wherever occurring, insert instead "Corporation".

(d) Section 4 (1), definition of "Under Secretary"—

After the definition of "third appointed day", insert:—

"Under Secretary" means the person for the time being holding office or acting as the Under Secretary of the Department of Industrial Relations;

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

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

## (3) Section 4A—

Before section 5, insert:—

**Under Secretary to be corporation sole for certain purposes.**

4A. (1) The Under Secretary is, for the purpose of exercising and performing the powers, authorities, duties and functions expressed to be conferred or imposed on the Corporation by or under this or any other Act, hereby incorporated as a corporation sole with the corporate name “Building and Construction Industry Long Service Payments Corporation”.

(2) In the exercise and performance of the powers, authorities, duties and functions expressed to be conferred or imposed on it by or under this or any other Act (except in relation to the content of a report or recommendation made by it to the Minister), the Corporation shall be subject to the control and direction of the Minister.

(3) The Corporation—

- (a) has perpetual succession;
- (b) shall have an official seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Corporation is constituted; and
- (e) is, for the purpose of any Act, a statutory body representing the Crown.

(4) The seal of the Corporation shall not be affixed to any instrument or document except in the presence of the Under Secretary, or a person employed as referred to in section 25 (1) who

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

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

is for the time being authorised by the Under Secretary for the purpose, who shall attest by his signature the fact and date of the affixing of the seal.

(5) All courts and persons acting judicially—

(a) shall take judicial notice of the seal of the Corporation that has been affixed to any instrument or document; and

(b) shall, until the contrary is proved, presume that the seal was properly affixed.

(4) Sections 5, 8–14A, 16–18, 19A, 19C, 19D, 22, 23, 26–28, 29 (1)–(5), 30–34, 37, 38A, 39—

Omit “Board” wherever occurring, insert instead “Corporation”.

(5) (a) Section 6 (1)—

Omit “Board” where firstly and thirdly occurring, insert instead “Corporation”.

(b) Section 6 (2)–(4)—

Omit the subsections.

(6) Sections 6A, 7—

Omit section 7, insert instead:—

**Accounts.**

6A. (1) The Corporation shall cause to be kept proper accounts and records in relation to all of its operations.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Corporation shall, as soon as practicable, but within 6 months, after the end of each financial year of the Corporation, prepare and submit to the Minister for presentation to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, and shall include such information as is requested by him, and shall exhibit a true and fair view of the financial position and transactions of the Corporation.

(4) The Corporation shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the Corporation relating to the relevant financial year, and shall indicate whether the statement of accounts complies with subsection (3), and shall set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

(7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by him of the statement.

(8) The financial year of the Corporation shall be the year commencing on 1st July.

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

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

7. (1) The accounts and records of financial transactions of the Corporation, and the records relating to assets of or in the custody of the Corporation, shall be inspected and audited by the Auditor-General.

(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the Corporation and may make copies thereof or take extracts therefrom.

(3) The Auditor-General or a person authorised by him may require a person, being a person engaged in the administration of this Act, to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty: \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts of records referred to in subsection (1).

(5) The Auditor-General shall report to the Corporation and the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in his judgment call for special notice or as are prescribed.

(6) Towards defraying the costs and expenses of any such inspection and audit, the Corporation shall pay to the Consolidated Revenue Fund such amounts, at such times, as the Treasurer decides.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 16 (4), (5)—

Omit “Board’s” wherever occurring, insert instead “Corporation’s”.

(8) Section 20 (2) (a)—

Omit “a member of the Board appointed by the Board”, insert instead “the Under Secretary or a person nominated by the Under Secretary”.

(9) (a) Section 25 (1)—

Omit the subsection, insert instead:—

(1) Except as provided by subsection (2), such staff as may be necessary for the purpose of carrying out the provisions of this Act shall be employed under and subject to the Public Service Act, 1979.

(b) Section 25 (2)—

Omit “Builders Licensing Board” wherever occurring, insert instead “Corporation”.

(c) Section 25 (3)—

After section 25 (2), insert:—

(3) For the purpose of exercising and performing the powers, authorities, duties and functions conferred or imposed on the Corporation by or under this or any other Act, the Corporation may—

- (a) with the approval of the Minister of the Department concerned and on such terms as may be arranged, make use of the services of any of the officers or temporary employees of any Government Department;  
**and**



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

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

(b) with the approval of any public authority and on such terms as may be arranged, make use of the services of any of the officers, servants or employees of that public authority.

(10) (a) Section 29 (6)—

Omit “Chairman of the Board”, insert instead “Under Secretary”.

(b) Section 29 (6)—

Omit “Board” where secondly occurring, insert instead “Corporation”.

(11) Sections 37B–37F—

After section 37A, insert:—

**General powers of the Corporation.**

37B. (1) The Corporation may, with the approval of the Minister, acquire by purchase or lease premises to be used for or to be used partly for the carrying out of its powers, authorities, duties and functions under this Act and the regulations and may, in respect of those premises, do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Corporation is constituted.

(2) The Corporation may make and enter into contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material, in connection with the exercise or performance by the Corporation of its powers, authorities, duties and functions under this or any other Act.

(3) Any contract or agreement entered into for the purposes of this section shall be deemed, for the purposes of the Constitution Act, 1902, to be a contract or agreement for or on account of the Public Service of New South Wales.

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

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

(4) The Corporation may cause to be published, in such manner as it thinks fit, any information relating to its powers, authorities, duties, functions or activities under this or any other Act.

**Annual report.**

37C. (1) The corporation shall, as soon as practicable after 30th June, but not later than 31st December, in each year forward to the Minister a report of its work and activities for the year ended on 30th June in that year.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by him of the report.

**Delegation.**

37D. (1) The Corporation may, by instrument in writing, delegate—

- (a) to a person employed as referred to in section 25 (1); or
- (b) to any officer, servant or employee of whose services the Corporation makes use pursuant to this Act.

the exercise or performance of such of the powers, authorities, duties or functions (other than this power of delegation) conferred or imposed on the Corporation by or under this or any other Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A power, authority, duty or function, the exercise or performance of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised or performed

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

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

from time to time in accordance with the terms of the delegation by the delegate to whom the exercise or performance thereof has been delegated.

(3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the Corporation may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(5) Any act or thing done or omitted or suffered to be done by a delegate while acting in the exercise of a delegation under this section shall be deemed to have been done or omitted or suffered to be done by the Corporation.

(6) An instrument purporting to be signed by a delegate of the Corporation in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Corporation and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Corporation under this section.

**Documents—how authenticated.**

37E. Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by the Under Secretary.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

**Recovery of charges, etc.**

37F. (1) Any charge, fee, remuneration or money due to the Corporation under the provisions of this Act or the regulations may be recovered as a debt in a court of competent jurisdiction.

(2) Proceedings for the recovery of any charge, fee, remuneration or money so due to the Corporation shall be deemed to be for the recovery of a debt or liquidated demand.

(12) Section 38—

Omit the section.

(13) Section 39 (1)—

After “alone”, insert “or before the chief industrial magistrate sitting alone”.

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SCHEDULE 2.

(Sec. 6).

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation: Sch. 2.**

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

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

“Corporation” means the corporation constituted by section 4A (1) of the Principal Act, as amended by this Act.

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

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Effect of certain acts, etc., of the Board.**

2. Any act or thing done or omitted or suffered to be done by the Board at any time before the appointed day in the exercise or performance of such of the powers, authorities, duties and functions as, immediately before that day, were conferred or imposed on the Board pursuant to the Principal Act shall, on and from that day, be deemed to have been done or omitted or suffered to be done, as the case may require, by the Corporation.

**Transfer of certain property, etc., of the Board to the Corporation.**

3. (1) This clause applies only to and in respect of—
- (a) the exercise or performance of such of the powers, authorities, duties and functions as, immediately before the appointed day, were conferred or imposed on the Board pursuant to the Principal Act; and
  - (b) such property as, immediately before that day, was vested in or belonged to the Board pursuant to the Principal Act.
- (2) On and from the appointed day—
- (a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to the Board shall vest in or belong to the Corporation;
  - (b) all debts, moneys and claims, liquidated and unliquidated, that, immediately before that day, were due or payable to, or recoverable by, the Board shall be debts due and moneys payable to and claims recoverable by the Corporation;
  - (c) all suits, actions and proceedings pending immediately before that day at the suit of the Board shall be respectively suits, actions and proceedings pending at the suit of the Corporation and all suits, actions and proceedings so pending at the suit of any person against the Board shall be respectively suits, actions and proceedings pending at the suit of that person against the Corporation;
  - (d) all contracts, agreements, arrangements and undertakings entered into with and all securities lawfully given to or by the Board and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Corporation;

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

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (e) the Corporation may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of moneys and claims referred to in this clause and for the prosecution of suits, actions and proceedings so referred to as the Board might have done but for the enactment of this Act;
- (f) the Corporation may enforce and realise any security or charge existing *immediately before that day in favour of the Board and may exercise any powers thereby conferred on the Board as if the security or charge were a security or charge in favour of the Corporation;*
- (g) all debts, moneys and claims, liquidated and unliquidated, that, *immediately before that day, were due or payable by, or recoverable against, the Board shall be debts due and moneys payable by and claims recoverable against the Corporation; and*
- (h) all liquidated and unliquidated claims for which the Board would, but for the enactment of this Act, have been liable shall be liquidated and unliquidated claims for which the Corporation shall be liable.

**References.**

4. On and from the appointed day, a reference to the Board in a provision of any other Act or in any by-law, regulation, statutory instrument or other document, whether of the same or of a different kind, being a reference to or in respect of—

- (a) the exercise or performance of such of the powers, authorities, duties and functions as, *immediately before that day, were conferred or imposed on the Board pursuant to the Principal Act; or*
- (b) such property as, *immediately before that day, was vested in or belonged to the Board pursuant to the Principal Act,*

shall be read and construed as a reference to the Corporation.

**Preparation and audit of certain accounts.**

5. (1) In this clause, "year" means year ending on 30th June.

(2) This clause applies only to and in respect of—

- (a) the exercise or performance of such of the powers, authorities, duties and functions as, *immediately before that day, were conferred or imposed on the Board pursuant to the Principal Act; or*

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

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SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(b) such property as, immediately before that day, was vested in or belonged to the Board pursuant to the Principal Act.

(3) The provisions of sections 43 and 44 of the Builders Licensing Act, 1971, shall continue to apply, after the appointed day, to and in respect of the Board in relation to any year ending on or before the appointed day as if this Act had not been enacted.

(4) The provisions of sections 6A, 7 and 37C of the Principal Act, as amended by this Act, shall be deemed to apply to and in respect of the whole of the year in which the appointed day occurs, as if that day occurred at the commencement of that year.

(5) The Board shall, as soon as practicable after the appointed day, forward to the Corporation all records relating to any matter or thing to which this clause applies and shall, so far as practicable, render all such assistance to the Corporation as is necessary to enable the Corporation to comply with requirements imposed on it pursuant to the operation of subclause (4).

**Certificate evidence.**

6. A certificate purporting to be under the hand of a prescribed officer, being a prescribed officer for the purposes of section 38A of the Principal Act, certifying—

- (a) that a person has or has not, on a date specified in the certificate, lodged with the Board or the Corporation a return under a provision of the Principal Act so specified, being a provision of the Principal Act as in force immediately before the appointed day, for a period so specified, being a period occurring before the appointed day; or
- (b) that a person has or has not, on a date specified in the certificate, paid to the Board or the Corporation the long service charges payable in respect of a worker so specified for a period so specified, being a period occurring before the appointed day,

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

**Regulations.**

7. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

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

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SCHEDULE 2—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or a public authority) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the foregoing clauses of this Schedule.

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