

**BUILDING AND CONSTRUCTION INDUSTRY LONG
SERVICE PAYMENTS (FURTHER AMENDMENT) ACT,
1983, No. 130**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 130, 1983.

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; to repeal certain provisions of the Building and Construction Industry Long Service Payments (Amendment) Act, 1980; and for other purposes. [Assented to, 20th December, 1983.]

Building and Construction Industry Long Service Payments (Further 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 (Further Amendment) Act, 1983".

Commencement.

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1–7, shall 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 be.

(3) Section 6 and Schedules 1, 3, 4 (1) (a)—(e), (1) (g), (2) and (3), 5 (1) and (3) and 6 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) Schedule 5 (2) 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.

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

Schedules.

4. This Act contains the following Schedules:—

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

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

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

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

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

SCHEDULE 6.—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

SCHEDULE 7.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

SCHEDULE 8.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 98, 1974.

5. The Principal Act is amended in the manner set forth in Schedules 1–7.

Amendment of Act No. 123, 1980.

6. The Building and Construction Industry Long Service Payments (Amendment) Act, 1980, is amended by omitting—

- (a) from the long title the words “; and to enact special provisions with respect to foundation workers and certain employers”;
- (b) the matter relating to Schedule 2 in section 4;
- (c) section 6;
- (d) Schedule 2.

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

Savings, transitional and other provisions.

7. Schedule 8 has effect.

SCHEDULE 1.**(Sec. 5.)****AMENDMENTS TO PART I OF THE PRINCIPAL ACT.**

- (1) Section 3—

From the matter relating to Part IV, omit “14, 14A”, insert instead “14–14D”.

- (2) (a) Section 4 (1), definition of “fourth appointed day”—
after the definition of “foundation worker”, insert:—

“fourth appointed day” means the day appointed and notified under section 2 (3) of the Building and Construction Industry Long Service Payments (Further Amendment) Act, 1983;

- (b) Section 4 (7), (8)—

After section 4 (6), insert:—

- (7) Where—

(a) any work comprises work that is, but for this subsection, partly building and construction work and partly other work;

(b) that work is performed for the same employer; and

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

SCHEDULE 1—*continued.*

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

- (c) the time spent in performing that part of that work that is building and construction work exceeds the time spent in performing that part of that work that is not building and construction work,

the whole of that work shall, for the purposes of this Act, be deemed to be building and construction work if the employer elects to pay long service charges in respect of the whole of that work.

(8) A reference in this Act to the performance of work, or service, as an apprentice is a reference to the performance of work, or service, as—

- (a) a probationer;
- (b) a trainee apprentice; or
- (c) an indentured apprentice,

within the meaning of the Apprenticeship Act, 1981, by a person for whom an approval has been given under that Act to the establishment of an apprenticeship.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

- (1) (a) Section 5 (2) (a) (iii)—

Omit “investments made under section 6”, insert instead “investment of the Fund”.

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

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 5 (3)—

After section 5 (2), insert:—

(3) Where, in respect of an instrument relating to a transaction, the Corporation, or a broker, dealer or other person acting on behalf of the Corporation in respect of the transaction, would, but for this subsection, be liable to stamp duty under the Stamp Duties Act, 1920, in respect of the instrument, the Corporation, broker, dealer or other person, as the case may be, shall not be so liable.

(2) Sections 5A–5D—

After section 5, insert:—

Investment of Fund.

5A. (1) The Fund shall, as far as practicable, be invested by the Corporation—

- (a) in securities of the Government of New South Wales;
- (b) in loans to the councils of shires or municipalities or cities or county councils;
- (c) in securities that are public securities as defined in section 6 (1) of the Income Tax Assessment Act 1936 of the Commonwealth;
- (d) in the manner authorised by sections 5B, 5C and 5D;
- (e) in loans to building societies registered under the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, except that any such loan shall not exceed—
 - (i) in the case of a society in respect of which the Treasurer has executed a guarantee under section 3 of the Government Guarantees Act, 1934, 80 per cent;or

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SCHEDULE 2—*continued.*

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

(ii) in any other case, 70 per cent,

of the value as certified by a valuer of the property mortgaged to the society in respect of which the loan is made, unless the amount by which the loan exceeds 80 or 70 per cent as aforesaid, as the case may be, has been guaranteed or indemnified by the Government of the Commonwealth or of the State of New South Wales or any other guarantor or indemnifier approved by the Minister; or

(f) in any other manner for the time being allowed by Act of Parliament or by the rules of court for the investment of trust funds.

(2) The Corporation is authorised to enter into, and give effect to, an agreement whereby it sells securities acquired by it under subsection (1) and later repurchases them at a price agreed upon before or at the time of sale.

Certain share investments authorised.

5B. (1) The Fund or any part thereof, whether at the time in a state of investment or not, may be invested by the Corporation in—

(a) the debentures or debenture stock or preference stock of a company incorporated under the law of any State or Territory, including a Territory under the trusteeship, of the Commonwealth in respect of which company—

(i) the profits and dividends;

(ii) the profits and dividends and earning rate; or

(iii) the profits and earning rate,

are as prescribed by subsection (2);

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) the unsecured notes of a company incorporated as aforesaid in respect of which company—
 - (i) the profits and dividends;
 - (ii) the profits and dividends and earning rate; or
 - (iii) the profits and earning rate,are as prescribed by subsection (3); or

- (c) the ordinary or other stock (not being preference stock) or shares of a company incorporated as aforesaid in respect of which company—
 - (i) the dividends;
 - (ii) the dividends and earning rate; or
 - (iii) the earning rate,are as prescribed by subsection (4).

- (2) For the purposes of subsection (1) (a)—
 - (a) the profits shall be profits, shown by the company for each of its 5 financial years preceding the investment by the Corporation before taxation and payment of interest payable in each such year on the debentures issued by the company ranking equally with or prior to the proposed debentures or debenture stock or preference stock in which investment is being made, equivalent to at least one and one-half times the amount of the interest so payable; and

 - (b) the dividends shall be dividends paid by the company upon its ordinary capital at the rate of at least 5 per cent per annum for each of its 5 financial years preceding the investment by the Corporation, except that where in respect of any such year the company has not paid a dividend as aforesaid the earning rate for the purposes of subsection (1) (a) (ii) and (iii) shall be an earning rate after taxation

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

and interest payable as referred to in paragraph (a), on the total of the ordinary capital, reserves and undistributed profits of the company of not less than 5 per cent in that year.

(3) For the purposes of subsection (1) (b), the profits and dividends or profits and dividends and earning rate or profits and earning rate shall be respectively as prescribed by subsection (2) in respect of profits for each of the 5 financial years of the company preceding the investment by the Corporation and in respect of dividends and earning rate for each of the 10 financial years of the company preceding the investment by the Corporation.

(4) For the purposes of subsection (1) (c) the dividends or dividends and earning rate or earning rate shall be as respectively prescribed by subsection (2) (b) for each of the 10 financial years of the company preceding the investment by the Corporation.

(5) The power conferred by subsection (1) shall not extend to any stocks, shares or securities subject to any liability for calls or other payments other than the liability arising from the investment in shares which are subject to a call or calls within a limited period.

(6) The Corporation shall not at any time make any investment pursuant to subsection (1) where the total amount of the money proposed to be invested and of other money at such time invested by the Corporation pursuant to that subsection would exceed one-quarter of the total amount of the Fund at such time.

(7) Where a company has acquired another company, that firstmentioned company shall be deemed to be a company in the debentures, debenture stock, preference stock, unsecured notes, ordinary or other stock or shares of which the Corporation may invest the Fund or any part thereof under this section—

(a) if the company acquired is a company in which the Corporation has, or could have, invested in accordance with this section; or

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

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) if—

- (i) that firstmentioned company has not, for the purpose of complying with the provisions of subsections (2), (3) and (4) (or such of them as the case may require), been in existence for any period required for such compliance; and
- (ii) the profits, dividends and earning rates (or such of them as the case may require) of the company acquired in that portion of the relevant period preceding its acquisition and those of the acquiring company during its existence, taken together, would satisfy the requirements of subsections (2), (3) and (4) (or such of them as the case may require).

(8) The Corporation may—

- (a) accept an offer of debentures, debenture stock, preference stock, unsecured notes, ordinary or other stock or shares in a company where that offer is for the purposes of public listing on a stock exchange although the profits, dividends and earning rate of the company making the offer (or such of them as the case may require) do not comply with the requirements of subsections (2), (3) and (4) (or such of them as the case may require) if that company has announced its intention to acquire a company in which the Corporation has, or could have, invested in accordance with this section;
- (b) accept in exchange for the whole or part of the debentures, debenture stock, preference stock, unsecured notes, ordinary or other stock or shares held by the Corporation in a company—
 - (i) for debentures, debenture stock, preference stock, unsecured notes, ordinary or other stock or shares in another company although the profits, dividends and earning rate of the latter company (or such of them as the case may require) do not comply with the requirements of subsections (2), (3) and (4) (or such of them as the case may require); or

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SCHEDULE 2—*continued.*

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

(ii) for debentures, debenture stock, preference stock, unsecured notes, ordinary or other stock or shares in a company being formed for the purpose of taking over another company in which the Corporation has or could have invested in accordance with this section.

(9) A statutory declaration by the secretary of a company or by the manager of a bank setting forth—

- (a) the profit of the company as referred to in subsection (2) or (3);
- (b) the rate of dividend paid by the company as referred to in subsection (2), (3) or (4);
- (c) the earning rate of the company as referred to in subsection (2), (3) or (4),

shall be sufficient evidence of the relevant facts.

(10) The provisions of sections 14 (3), (4), (5), (6), (7), (10) and (11), 21, 21A, 22, 24 and 25 of the Trustee Act, 1925, shall, subject to this section, apply to the Corporation in the exercise of the powers conferred by this section and to any investment made by the Corporation pursuant to this section in the same way as those provisions apply to a trustee.

(11) In subsection (1), “company” does not include any company having a paid up capital of less than \$1,000,000.

(12) In this section—

“debenture” means any instrument or document acknowledging a loan, other than a loan by way of mortgage under section 5C, which creates a security by way of charge over assets of a company;

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

“ordinary or other stock or shares” includes bonus shares, rights to subscribe for new shares, options to subscribe for shares or convertible notes, and other rights or options to acquire a share in the share capital of a company;

“unsecured note” means any instrument or document acknowledging a loan which does not create a security by way of charge over assets of a company.

Investment upon mortgages of land, etc.

5c. (1) The Fund or any part thereof, whether at the time in a state of investment or not, may be invested by the Corporation—

- (a) by way of loan to the Crown where the repayment of the loan is secured over land or otherwise as the Corporation determines;
- (b) upon mortgage over land but so that the amount secured by the mortgage does not exceed—
 - (i) three-quarters of the value or the estimated value of the land certified or to be certified by the Valuer-General as hereinafter provided; or
 - (ii) two-thirds of the value or the estimated value of the land certified or to be certified by a valuer not being the Valuer-General;
- (c) in the purchase or acquisition of any land from any person other than the Crown at a price not exceeding the value or the estimated value certified or to be certified by the Valuer-General as hereinafter provided;
- (d) by purchasing, acquiring or leasing from the Crown any land;
- (e) by improving land referred to in paragraph (c) or (d);

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

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (f) by improving, altering or maintaining real or personal property in which it has an interest as owner, lessee or mortgagee in possession; or
 - (g) by purchasing and installing, or by leasing out, or by taking security over, personal property situated, or to be situated, on land (as defined by subsection (9)) in which the Corporation has an interest as owner, lessee or mortgagee in possession.
- (2) The amount secured by a mortgage as referred to in subsection (1) (b) may exceed the amount which may be secured under subsection (1) (b) (i) or (ii), as the case may be, if the amount by which the amount secured exceeds the amount which may be secured under subsection (1) (b) (i) or (ii), as the case may be, has been guaranteed or indemnified by the Government of the Commonwealth or of the State of New South Wales or any other guarantor or indemnifier approved by the Minister.
- (3) The provisions of subsections (1) (a) and (b) and (2) have effect notwithstanding anything contained in the Trustee Act, 1925, or any other Act.
- (4) The Valuer-General shall, upon and in accordance with a written request by the Corporation, furnish in accordance with this section a certificate as to the value or estimated value of any land or lease of any land specified in that request.
- (5) In making any valuation or estimate pursuant to subsection (4) the Valuer-General shall have regard to such matters as in the opinion of the Corporation are relevant to the valuation or the estimate and shall apportion such valuation or estimate on an itemised basis as the Corporation requires.
- (6) The Corporation may, notwithstanding anything contained in this or any other Act in or in connection with the exercise of any of its powers under subsection (1) or (2), pay by

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

such instalments as it thinks fit the amount to be lent on mortgage of land or the purchase price or price of acquisition of land and in so doing may take into consideration—

- (a) the cost of acquisition of the land;
- (b) the cost of any works of demolition; and
- (c) the cost of any improvements erected or in course of erection or to be erected on the land.

(7) Where any transaction involving Crown land pursuant to subsection (1) would not, but for this subsection, be authorised by the Crown Lands Consolidation Act, 1913, the transaction in accordance with subsection (1) shall be deemed to have been so authorised.

(8) The person or body in whom or which land referred to in paragraph (b) (iii) of the definition of “land” in subsection (9) is vested shall be deemed to have power and authority to enter into any transaction whereby under subsection (1) the Fund or any part thereof may be invested.

(9) In this section, except in so far as the context or subject-matter otherwise indicates or requires—

“Crown land” has the meaning ascribed thereto in the Crown Lands Consolidation Act, 1913;

“land” includes—

- (a) freehold or leasehold land;
- (b) (i) Crown land;
- (ii) any holding under the Crown Lands Consolidation Act, 1913; and

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (iii) land (other than Crown land) vested in Her Majesty or Her Majesty for the purposes of any Act, the Governor of New South Wales, a Minister of the Crown, a Minister of the Crown as Constructing Authority or a Minister of the Crown for the purposes of any Act;
- (c) unimproved land;
- (d) land with any or all improvements, fixtures, fittings, furnishings and equipment thereon;
- (e) land and any or all improvements, fixtures, fittings, furnishings and equipment to be erected or installed thereon;
- (f) land which has been subdivided under the Strata Titles Act, 1973; and
- (g) other stratified areas including air spaces;

“mortgage” includes a contributory mortgage.

Further investment powers.

5D. (1) In this section—

“bank” means—

- (a) the State Bank of New South Wales; or
- (b) a bank (whether or not it carries on business in Australia) approved by the Minister;

“Government” means the Government of New South Wales, of any other State, of the Commonwealth or of a Territory of the Commonwealth, and includes—

- (a) a statutory body representing the Crown in right of New South Wales; and

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

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) a corporation constituted by an Act being, in the case of a corporation aggregate, a corporation one or more of the members of the governing body of which is a person appointed by the Governor or a Minister.

(2) Nothing in section 5A, 5B or 5C affects the operation of this section.

(3) The Fund or any part thereof, whether at the time in a state of investment or not, may be invested by the Corporation—

- (a) by lending money on the security of, or by purchasing, promissory notes, bills of exchange, letters of credit or any other commercial documents under which recourse may be had to a Government for repayment of the loan;
- (b) by lending money on the security of a guarantee under which recourse may be had to a Government for repayment of the loan;
- (c) by purchasing debts the repayment of which is guaranteed by a Government;
- (d) by lending money to, or depositing money with, a bank or by taking up securities issued by a bank;
- (e) by purchasing or lending money on the security of bills of exchange or other commercial documents that, in each case, are drawn, endorsed or accepted by a bank; or
- (f) by lending money on the security of a letter of credit which is issued or confirmed by a bank.

(3) Section 6—

Omit the section.

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

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) (a) Section 10 (1) (b), (b1)—

Before “where” wherever occurring, insert “subject to subsection (5),”.

(b) Section 10 (3)—

Omit the subsection, insert instead:—

(3) A person may, at any time, apply, in a form approved by the Corporation, to have his name entered in the register.

(c) Section 10 (4), (5)—

Omit section 10 (4), insert instead:—

(4) The Corporation may, in respect of any person or class of persons, fix, for the purposes of subsection (2), an earlier date than the date on which that person or a person belonging to that class applied to have his name entered in the register, but the Corporation shall not, at the request of a person, fix a date earlier than 2 years before that request unless it considers that special circumstances warrant its doing so.

(5) The Corporation shall not, after the fourth appointed day, cause the name of any person to be entered in the register as the name of a foundation worker.

(2) (a) Section 11 (1) (b3)—

Omit the paragraph, insert instead:—

(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 absent from, and is not required to be present at, his work as a worker under a contract of employment by reason that the award

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

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

or any industrial agreement relating to his work provides that ordinary working hours may be worked on a specified number of days in any period, being a number of days that is less than the number of working days in that period,

(b) Section 11 (1) (k)—

Omit the paragraph, insert instead:—

(k) in respect of the period commencing on the appointed day and ending on the fourth 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

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

(c) Section 11 (3)—

Omit "within 1 month after the third appointed day or within such longer period as the Corporation may in any particular case allow", insert instead "before the fourth appointed day".

SCHEDULE 3—*continued.*

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

(3) Section 12 (4)—

After section 12 (3), insert:—

(4) Where no objection is lodged pursuant to subsection (2) in relation to a notice or any objection so lodged is determined under subsection (3), the Corporation shall not consider any other objection relating to the accuracy of the notice unless—

- (a) the objection is lodged with the Corporation within 2 years after the building and construction work to which the objection relates was performed; or
- (b) the Corporation considers that special circumstances warrant its doing so.

(4) Section 13 (1) (a3)—

After section 13 (1) (a2), insert:—

- (a3) that any work specified in the determination is not building and construction work if—
 - (a) that work comprises work that is, but for the determination, partly building and construction work and partly other work;
 - (b) that work is performed for the same employer; and
 - (c) the time spent in performing that part of that work that is building and construction work does not, in the opinion of the Committee, exceed the time spent in performing that part of that work that is not building and construction work;
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Building and Construction Industry Long Service Payments (Further Amendment).

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) (a) Section 14 (3)—

Omit the subsection, insert instead:—

(3) An employer by whom any moneys are paid or payable in any prescribed period in respect of building and construction work performed by workers (whether or not those moneys are paid or payable by that employer directly to those workers) shall, within 14 days after the expiration of that prescribed period—

- (a) lodge with the Corporation a return relating to that prescribed period; and
- (b) subject to subsection (4B), pay to the Corporation, as long service charges, an amount equal to the prescribed percentage of the amounts required to be shown pursuant to subsection (4) (b) (iii) and (iv) in a return relating to that prescribed period.

Penalty: \$5,000.

(b) Section 14 (4) (b) (iii), (7) (b) (iii)—

After “employment” wherever occurring, insert “(otherwise than as an apprentice)”.

(c) Section 14 (4) (b) (iv), (7) (b) (iv)—

After “worker” wherever occurring, insert “(not being a worker who performed that work as an apprentice)”.

(d) Section 14 (4A), (6), (8)—

Omit “\$1,000” wherever occurring, insert instead “\$5,000”.

(e) Section 14 (6) (e)—

Omit “shown in the return pursuant to subsection (7) (b) (iii) and (iv)”, insert instead “required to be shown pursuant to subsection (7) (b) (iii) and (iv) in a return relating to that work”.

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

SCHEDULE 4—*continued.*

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

- (f) Section 14 (8B), (8C)—
Omit the subsections.
- (g) Section 14 (9)–(9C)—
Omit the subsections.
- (2) (a) Section 14A (1)—
Omit “he has, under section 14 (9) (b), given an undertaking to that other employer”. insert instead “that other employer is, under section 14B, not required to pay long service charges”.
- (b) Section 14A (1), (3), (4)—
Omit “\$1,000” wherever occurring, insert instead “\$5,000”.
- (c) Section 14A (4) (b)—
Omit “shown in the return”, insert instead “required to be shown in a return”.
- (3) Section 14B—
After section 14A, insert:—

Exclusion from liability for long service charges.

14B. (1) In this section—

“authorised employer” means—

- (a) a registered employer; or
- (b) a person designated by the Corporation as an authorised employer under subsection (2);

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

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

“prescribed certificate” means a prescribed certificate referred to in subsection (3) (d) (i);

“prescribed declaration” means a prescribed declaration referred to in subsection (3) (d) (ii);

“prescribed period” has the meaning ascribed thereto by section 14 (1).

(2) Where—

- (a) a person applies, in a form approved by the Corporation, to the Corporation to be designated as an authorised employer for the purposes of this section; and
- (b) the Corporation is satisfied that the person is, or intends to become, the employer of any worker,

the Corporation shall, by notice in writing to the person, designate the person as an authorised employer for the purposes of this section.

(3) Where—

- (a) during any prescribed period building and construction work was performed by a person (in this section referred to as “the principal worker”) for another person pursuant to a contract, other than a contract of employment, with another person;
- (b) the principal worker and that other person are authorised employers;
- (c) at least 1 worker, under a contract of employment or any other contract with the principal worker, assisted in performing that work;

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

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

- (d) within 14 days after the expiration of that prescribed period or within such longer period as the Corporation may in any particular case allow, that other person lodges with the Corporation—
 - (i) a prescribed certificate issued by that other person and complying with subsection (4); and
 - (ii) a prescribed declaration made by the principal worker and complying with subsection (5); and
- (e) any other conditions prescribed for the purposes of this subsection are complied with,

then, notwithstanding section 14 (3) or (6), that other person is not required to make a return, or to include in any return lodged by that other person under section 14 (3) or (6) the particulars referred to in section 14 (4) (b) or (7) (b), as the case may be, in respect of any worker who performed the work referred to in paragraph (a) or to pay any long service charges in respect of amounts relating to that work and referred to in section 14 (4) (b) (iv) or (7) (b) (iv), as the case may be.

- (4) A prescribed certificate shall—
 - (a) be in a form approved by the Corporation;
 - (b) specify the name of each principal worker who performed building and construction work for the person issuing the certificate during the prescribed period to which the certificate relates; and
 - (c) contain such other information relating to each such principal worker as the Corporation deems necessary for the purpose of administering this Act.

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

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

(5) A prescribed declaration shall—

- (a) be in a form approved by the Corporation;
- (b) contain a statement that the principal worker accepts liability to make a return and pay long service charges in respect of the building and construction work to which the declaration relates;
- (c) specify the name and address of at least 1 worker who, under a contract of employment or any other contract with the principal worker, assisted in performing that work; and
- (d) contain such other information relating to that work as the Corporation deems necessary for the purposes of administering this Act.

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

Penalty: \$5,000.

(7) A principal worker who makes a prescribed declaration and a person who lodges the prescribed declaration with the Corporation shall each retain a copy of the prescribed declaration for a period of at least 6 years after it was made or lodged, as the case may be.

Penalty: \$5,000.

(8) A principal worker who elects to do so may lodge a return and pay long service charges under section 14 in respect of any building and construction work performed personally by the principal worker as if the principal worker were the employer and paid or was liable to pay money in respect of that work under the contract referred to in subsection (3) (a).

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

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

(4) Sections 14C, 14D—

At the end of Part IV, insert:—

Interest on, and extension of time for payment of, long service charges.

14C. (1) Any amount due in respect of long service charges under section 14 and not paid before the due date shall bear interest at the prescribed rate.

(2) Any such interest shall, except for the purpose of calculating the amount of interest payable under subsection (1), 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 under section 14.

(3) The Corporation 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 under section 14 be varied to such later date as may be specified in the direction;
- (b) that any such charges may be paid in such instalments and at such times as may be specified in the direction; or
- (c) that the amount of any interest payable under subsection (1) be waived or be reduced by such amount as may be specified in the direction,

and the direction shall, notwithstanding anything to the contrary in section 14 or this section, have effect according to its tenor.

Review of decisions under sec. 14C.

14D. (1) In this section, “Review Tribunal” means a Review Tribunal constituted under subsection (6).

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

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

(2) A person who is aggrieved by a direction given by the Corporation under section 14C, or by the refusal of the Corporation to give such a direction, may apply to the Committee for a review of the matter.

(3) An application under subsection (2) shall—

- (a) be in writing in a form approved by the Corporation;
- (b) specify why the decision of the Corporation with respect to the direction or the refusal to give the direction is unreasonable, having regard to the circumstances notified to the Corporation at the time the decision was made;
- (c) be accompanied by a statutory declaration verifying the particulars set out in the application; and
- (d) be lodged at an office of the Corporation within 1 month after the applicant is notified of the decision of the Corporation with respect to the direction or the refusal to give the direction.

(4) Where a person requests the Corporation to give a direction and the Corporation fails to make a decision on the matter within 3 months after the request was made, the Corporation shall, for the purposes of subsection (3) (d), be deemed to have refused to give the direction and to have notified the person of its refusal.

(5) Upon receipt of an application made under subsection (2), the Committee may—

- (a) refer the matter to the Corporation for reconsideration or to a Review Tribunal for review, or so refer the matter to both the Corporation and a Review Tribunal; or
- (b) refuse the application.

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

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

- (6) A Review Tribunal shall be constituted by—
- (a) a conciliation commissioner under the Industrial Arbitration Act, 1940;
 - (b) a person to represent employers; and
 - (c) a person to represent workers,
- appointed by the Minister.

(7) The procedure of a Review Tribunal shall, subject to any direction of the Minister, be as determined by the Tribunal.

(8) A Review Tribunal shall investigate any matter referred to it by the Committee and may—

- (a) if it considers that the decision of the Corporation with respect to the direction or the refusal to give the direction is unreasonable having regard to the circumstances notified to the Corporation at the time the decision was made—give such directions to the Corporation with respect to the matter as the Review Tribunal considers appropriate; or
- (b) refuse the application concerned.

(9) The Corporation shall give effect to any direction of a Review Tribunal under subsection (8) (a).

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 17 (3A)—

Omit "\$1,000", insert instead "\$5,000".

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

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(2) (a) Section 19 (1)—

Omit “at any time before the expiration of that period”, insert instead “during any period by reference to which those benefits were calculated”.

(b) Section 19 (2)—

Omit “before the expiration of that period”, insert instead “during any period by reference to which that leave was calculated”.

(3) Section 19B (b1)—

Omit the paragraph, insert instead:—

- (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 a specified number of days in any period, being a number of days that is less than the number of working days in that period,

(4) Section 19C (3A)—

After section 19C (3), insert:—

(3A) Where no objection is lodged pursuant to subsection (2) in relation to a notice or any objection so lodged is determined under subsection (3), the Corporation shall not consider any other objection relating to the accuracy of the notice unless—

- (a) the objection is lodged with the Corporation within 2 years after the building and construction work to which the objection relates was performed; or

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

SCHEDULE 5—*continued.*

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

- (b) the Corporation considers that special circumstances warrant its doing so.
- (5) Section 19D (1)—
After “longer period”, insert “(not exceeding 12 months)”.

SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

- (1) Section 24—
Omit “three years”, insert instead “at least 6 years”.
- (2) Sections 24, 30A (1), 31 (4), 32 (1), 37 (2), 37 (2A)—
Omit “\$1,000” wherever occurring, insert instead “\$5,000”.
- (3) Sections 30A (1), 31 (1)—
Omit “3 years” wherever occurring, insert instead “6 years”.
- (4) Section 31A—
After section 31, insert:—
Employers to give notice of certain changes.
31A. A person who is an employer of workers shall serve on the Corporation notice in writing of—
(a) any change in the situation of the principal office of the person;

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

SCHEDULE 6—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(b) in the case of a firm (within the meaning of the Business Names Act, 1962)—any change in the membership of the firm; and

(c) any change in the business name under which the business of the person is carried on,

not later than 21 days after the day on which the change occurs.

Penalty: \$5,000.

(5) Section 36A—

After section 36, insert:—

Arrangements with other States and Territories.

36A. (1) In this section, “corresponding law”, in relation to a Territory of the Commonwealth or a State other than New South Wales, means a law of the Territory or State—

(a) that provides for long service payments to workers engaged in the building and construction industry, being payments that are the same as, or similar to, the payments provided by this Act; and

(b) that is prescribed as a corresponding law for the purposes of this section.

(2) The Minister may make a reciprocal arrangement with the Minister of State of the Territory or State responsible for the administration of a corresponding law, being a reciprocal arrangement relating to—

(a) long service payments;

(b) the exchange of information concerning service credits and entitlements to long service payments between the Corporation and any equivalent authority established under the corresponding law; and

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

SCHEDULE 6—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (c) such other matters relating to long service payments as the Minister thinks necessary or convenient.

(3) Subject to subsection (4), where—

- (a) a person is paid a long service payment by an authority established under a corresponding law of a Territory of the Commonwealth or a State other than New South Wales;
- (b) the amount is so paid, either wholly or partly, in respect of a period of continuous service in the building and construction industry served by the person within New South Wales; and
- (c) the Minister has made under subsection (2) a reciprocal arrangement with the Minister of State of the Territory or State responsible for the administration of the corresponding law,

the Corporation shall, on request by the authority referred to in paragraph (a), pay to that authority from the Fund, an amount equal to the amount that bears the same proportion to the amount paid as referred to in paragraph (a) by that authority as the period of continuous service referred to in paragraph (b) bears to the total period of continuous service in respect of which that authority so paid that amount.

(4) The payment of an amount by the Corporation under subsection (3) shall be made subject to such terms and conditions, if any, as are specified in the reciprocal arrangement referred to in subsection (3) (c).

- (6) Section 37A (1)—

Omit "\$500", insert instead "\$5,000".

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

SCHEDULE 6—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(7) (a) Section 38A—

Omit “prescribed officer”, insert instead “person for the time being holding, or acting in, the office of Chief Executive Officer, Building and Construction Industry Long Service Payments Corporation, or a prescribed office”.

(b) Section 38A (a)—

Omit “or” where lastly occurring.

(c) Section 38A (a1)—

After section 38A (a), insert:—

(a1) that a person was or was not, on a date specified in the certificate, an authorised employer within the meaning of section 14B; or

(8) Section 38B—

After section 38A, insert:—

Protection from liability.

38B. No matter or thing done in good faith for the purpose of executing this Act shall subject the Minister, the Under Secretary or any person acting under the direction of the Minister or of the Corporation personally to any action, liability, claim or demand.

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

SCHEDULE 7.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) Section 13 (1) (a2) (iii)—

Omit "committee", insert instead "Committee".

(2) (a) Section 30A (1) (b)—

Omit "Corporate Affairs Commission", insert instead "National Companies and Securities Commission".

(b) Section 30A (2) (a)—

Omit "section 203A (7) of the Companies Act, 1961", insert instead "section 342 (6) of the Companies (New South Wales) Code".

(c) Section 30A (2) (b)—

Omit "section 193 (1) (c) (i) of the Companies Act, 1961", insert instead "section 328 (1) (c) (i) of the Companies (New South Wales) Code".

(3) Section 37C (1)—

Omit "corporation", insert instead "Corporation".

SCHEDULE 8.

(Sec. 7.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

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.

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

SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Prescribed rate of interest on overdue long service charges.**

2. The rate of interest prescribed for the purposes of section 14c (1) of the Principal Act, as amended by this Act, shall, unless and until some other rate of interest is prescribed, be deemed to be 2 per cent per calendar month or part of a calendar month.

Refund of certain interest paid on overdue long service charges.

3. (1) In this clause—

“long service charges” means long service charges under section 14 of the Principal Act;

“prescribed amount”, in relation to interest paid or payable on any amount due in respect of long service charges, means an amount equal to 70 per cent of the amount of interest so paid or payable.

(2) Where, before the date of assent to this Act, an employer has paid interest on any amount due in respect of long service charges, the Corporation may direct that the prescribed amount of that interest be credited to the employer and that—

(a) the amount of long service charges which, on or after that date, has not been paid or becomes payable by the employer be reduced by the prescribed amount so credited, except to the extent that it is refunded under paragraph (b); or

(b) where it considers that special circumstances warrant its doing so, the whole or any part of the prescribed amount so credited be refunded to the employer.

(3) Where, immediately before the date of assent to this Act, interest on any amount of long service charges is payable by an employer but has not been paid, the Corporation may direct that the amount of interest due be reduced by the prescribed amount.

(4) A direction of the Corporation under this clause shall, notwithstanding anything to the contrary in the Principal Act, have effect according to its tenor.

(5) The power conferred on the Corporation by section 14c (3) of the Principal Act, as amended by this Act, may be exercised in relation to long service charges payable before the date of assent to this Act as well as long service charges payable after that date.

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

SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(6) The provisions of section 14D apply to a direction, or a refusal to give a direction, under this clause in the same way as those provisions apply to a direction, or a refusal to give a direction, under section 14C (3) of the Principal Act, as amended by this Act.

(7) Except as otherwise provided by this Schedule, nothing in this Act affects any interest which, immediately before the date of assent to this Act, was due and payable in respect of any unpaid long service charges.

Directions concerning payment of long service charges.

4. A direction under section 14 (8C) of the Principal Act which is in force immediately before the date of assent to this Act shall, on and from that date, be deemed to have been given under section 14C (3) of the Principal Act, as amended by this Act.

Pending applications for entry in register as foundation worker.

5. Where—

(a) before the fourth appointed day, a person duly applies pursuant to section 10 (3) (a) of the Principal Act or clause 3 (3) of Schedule 2 to the Building and Construction Industry Long Service Payments (Amendment) Act, 1980, to have the person's name entered in the register as the name of a foundation worker; and

(b) the application has not been dealt with before that day,

the application shall be dealt with as if this Act had not been enacted.

Undertakings to accept liability.

6. (1) Where an undertaking referred to in section 14 (9) of the Principal Act—

(a) was given before the fourth appointed day; and

(b) relates to building and construction work performed after that day, or partly before and partly after that day,

the provisions of section 14 (9) of the Principal Act, as in force immediately before that day, continue to apply to that work.

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

SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) An undertaking referred to in section 14 (9) of the Principal Act, being an undertaking in force immediately before the fourth appointed day and given not earlier than 3 years before that day, shall, for the purposes of section 14B (7) of the Principal Act, as amended by this Act, be deemed to be a prescribed declaration.

Extension of period for retention of certain records.

7. The amendment made by this Act to section 24 of the Principal Act does not apply to books or records in which the last entry was made earlier than 3 years before the fourth appointed day.

Notification of appointment of receiver, liquidator, etc.

8. (1) In relation to a person who was, on the fourth appointed day, the official manager, or the receiver or manager of the property, of a company, section 30A (1) of the Principal Act, as amended by this Act, shall be read and construed as if the reference therein to 6 years were a reference to 3 years.

(2) In relation to a person who was, on the fourth appointed day, the liquidator of a company, section 31 (1) of the Principal Act, as amended by this Act, shall be read and construed as if the reference therein to 6 years were a reference to 3 years.

Validation—transparencies of certain documents.

9. For the purposes of section 3 (3A) (b) of the Evidence (Reproductions) Act, 1967, a certificate incorporated in a transparency referred to in that paragraph which was purported to have been signed before 11th March, 1983—

- (a) by the Director, Long Service Leave Division, Builders Licensing Board or by a person purporting to be acting in that office; or
- (b) by the Automatic Data Processing Manager or the Controller Operations, Long Service Leave Division, Builders Licensing Board or by a person purporting to be acting in either of those offices,

shall be deemed to have been duly signed by an approved person within the meaning of section 3 of the Evidence (Reproductions) Act, 1967.
