

**BUILDING AND CONSTRUCTION INDUSTRY LONG  
SERVICE PAYMENTS (AMENDMENT) ACT 1986 No. 149**

NEW SOUTH WALES



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**BUILDING AND CONSTRUCTION INDUSTRY LONG  
SERVICE PAYMENTS (AMENDMENT) ACT 1986 No. 149**

NEW SOUTH WALES



**Act No. 149, 1986**

An Act to amend the Building and Construction Industry Long Service Payments Act 1986 for the purpose of making further provision with respect to the making of reciprocal arrangements between the Minister administering that Act and Ministers of other States, the Commonwealth and the Northern Territory for the reciprocal recognition of workers' service in the building and construction industry, and for related purposes. [Assented to, 17 December 1986]

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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 1986".

**Principal Act**

2. The Building and Construction Industry Long Service Payments Act 1986 is referred to in this Act as the Principal Act.

**Amendment of Act No. 19, 1986**

3. The Principal Act is amended in the manner set forth in Schedules 1-4.

**Transitional provision**

4. Schedule 5 has effect.

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SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART 1 OF THE PRINCIPAL ACT

**Section 3 (Interpretation)—**

(1) Section 3 (1), definitions of "corresponding authority", "corresponding law" —

After the definition of "Corporation", insert:

"corresponding authority" means the authority under a corresponding law that is for the time being charged with the day to day administration of that law;

"corresponding law" means a law declared by an order in force under subsection (6) to be a corresponding law for the purposes of this Act;

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SCHEDULE 1—*continued*

AMENDMENTS TO PART 1 OF THE PRINCIPAL ACT—*continued*

(2) Section 3 (1), definition of “reciprocating State or Territory” —

After the definition of “long service payment”, insert:

“reciprocating State or Territory” means a State or Territory of the Commonwealth declared by an order in force under subsection (6) to be a reciprocating State or Territory for the purposes of this Act;

(3) Section 3 (1), definition of “year’s service” —

After the definition of “working day”, insert:

“year’s service” means a year’s service within the meaning of subsection (5).

(4) Section 3 (5)–(7)—

After section 3 (4), insert:

(5) For the purposes of this Act, a worker shall be deemed to have a year’s service for every 220 days’ service that is credited to the worker in the register of workers kept under this Act or in a record of building and construction workers’ service kept under a corresponding law.

(6) Subject to subsection (7), the Governor may, by order published in the Gazette—

(a) declare a State or Territory of the Commonwealth in relation to which an agreement entered into under section 55 (1) is in force to be a reciprocating State or a reciprocating Territory as the case requires; and

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SCHEDULE 1—*continued*

AMENDMENTS TO PART 1 OF THE PRINCIPAL ACT—*continued*

(b) declare a law of such a State or Territory to be a corresponding law for the purposes of this Act.

(7) A declaration shall not be made under subsection (6) (b) in respect of the law of a State or Territory unless the Governor is satisfied that the law provides for the payment of long service benefits to or in respect of workers who are or have been engaged in the building and construction industry in that State or Territory.

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SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART 3 OF THE PRINCIPAL ACT

(1) Section 19 (**Cancellation of registration**)—

Section 19 (1)—

Omit "the registered worker has not been credited with any service in the register of workers", insert instead "it is satisfied that the registered worker has not been credited with any service in the register of workers kept under this Act or in a record of building and construction workers' service kept under a corresponding law".

(2) Section 24 (**Limitations on service credits**)—

(a) Section 24 (2A), (2B)—

After section 24 (2), insert:

(2A) Where—

(a) in respect of any year ending 30 June a registered worker would, but for this subsection, be entitled to be credited in the register of workers kept under this Act with a period of service and to be credited in a record of building and construction workers' service kept under a corresponding law with another period of service; and

SCHEDULE 2—*continued*AMENDMENTS TO PART 3 OF THE PRINCIPAL ACT—*continued*

- (b) those periods of service together amount to more than 220 days,

the period of service with which the worker may be credited in the register of workers kept under this Act shall be adjusted as prescribed so as to provide that the total period with which the worker is credited in those registers does not exceed 220 days.

(2B) The adjustment referred to in subsection (2A) shall be made—

- (a) on the making of an application under this Act or under a corresponding law for a long service payment to be made or a long service benefit to be paid in respect of a period of service that includes either or both of the periods of service referred to in that subsection; or
- (b) at such other time as the Corporation may decide.

(b) Section 24 (3)—

Omit the subsection, insert instead:

(3) Where—

- (a) a long service payment is made to a person as a result of an application made under section 28 (1) by virtue of the person's having fulfilled the requirements specified in section 28 (1) (b), (c) or (d); or
- (b) a long service benefit is paid to a person as a result of an application made under a provision of a corresponding law that corresponds to section 28 (1) by virtue of the person's having fulfilled requirements similar to those so specified,

the person shall not be credited in the register of workers with any day's service in respect of building and construction work performed by that person during the period of 12 months immediately following the date of that application.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART 3 OF THE PRINCIPAL ACT—*continued*

(3) Section 26 (**Falsifying claims for service credits, etc.**)—

Before “false or misleading”, insert “, to that person’s knowledge.”.

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SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART 4 OF THE PRINCIPAL ACT

(1) Section 27 (**Interpretation: Part 4**)—

Section 27 (2)—

Omit the subsection.

(2) Section 28—

Omit the section, insert instead:

**Entitlement to long service payments**

28. (1) A person who is a registered worker having service credits in the register of workers may apply to the Corporation in the approved form for a long service leave payment if—

(a) the person has completed 15 or more years’ service as a worker;

(b) the person—

(i) has completed 10 or more years’ service as a worker; and

(ii) intends permanently to cease to work in the building and construction industry;

(c) the person—

(i) has completed 5 or more years’ service as a worker, otherwise than as an apprentice; and

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SCHEDULE 3—*continued*

AMENDMENTS TO PART 4 OF THE PRINCIPAL ACT—*continued*

(ii) intends permanently to cease to work in the building and construction industry;

(d) the person—

(i) has completed at least 55 days' service as a worker;

(ii) has attained the prescribed retiring age; and

(iii) intends permanently to cease to work in the building and construction industry;

(e) the person has at least 55 days' service as a worker and a registered medical practitioner has certified the person to be totally incapacitated for service in the building and construction industry; or

(f) the person has 10 or more years' service as a worker—

(i) since first becoming entitled to apply for a long service payment (whether or not it was paid) by virtue of the worker's being a person referred to in paragraph (a); or

(ii) since the person would have first become so entitled but for the operation of section 31 (1) or (2).

(2) The personal representative of a person who died having service credits in the register of workers may apply to the Corporation in the approved form for a long service payment if—

(a) the person was, immediately before death, entitled to apply for a long service payment by virtue of subsection (1) (a) or (f);

(b) the person had, immediately before the date of death, completed 10 or more years' service as a worker; or

(c) the person had, immediately before that date, completed at least 55 days' service as a worker but was not a worker referred to in paragraph (a) or (b).



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SCHEDULE 3—*continued*

AMENDMENTS TO PART 4 OF THE PRINCIPAL ACT—*continued*

(3) A person who, in support of an application made under subsection (1) or (2), makes a statement which is, to the knowledge of that person, false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding \$5,000.

(4) In this section—

(a) a reference to service as a worker is a reference to service as a worker in New South Wales or to service as a worker partly in New South Wales and partly in one or more reciprocating States or Territories; and

(b) a reference to a period of service, in relation to a person, does not include a period of service in respect of which the person has previously received a long service payment by virtue of subsection (1) (b), (c), (d) or (e) or a corresponding provision of the former Act or has previously received a long service benefit by virtue of a corresponding provision of a corresponding law.

(3) **Section 31 (Election to take benefits under this Act or under the Long Service Leave Act 1955 or an Act of a reciprocating State or Territory corresponding to that Act)—**

(a) Section 31 (1)—

After “Long Service Leave Act 1955”, insert “or a law of a reciprocating State or Territory corresponding to that Act”.

(b) Section 31 (1)—

After “section 5 (2) (a) of that Act”, insert “, or a provision of that law corresponding to section 5 (2) (a) of that Act,”.

(c) Section 31 (3)—

After “the former Act”, insert “or is paid a long service benefit under a corresponding law”.

(d) Section 31 (3)—

After “that long service payment”, insert “or benefit”.

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SCHEDULE 3—*continued*

AMENDMENTS TO PART 4 OF THE PRINCIPAL ACT—*continued*

(4) Section 32A—

After section 32, insert:

**Entitlement to long service benefit for service in a reciprocating State or Territory**

32A. (1) A person who is a registered worker may apply to the Corporation in the approved form for the payment by the Corporation of a long service benefit calculated in accordance with the provisions of the corresponding law of a reciprocating State or Territory if—

(a) the person—

(i) has completed a period of service as a worker in that State or Territory or partly in that State or Territory and partly in New South Wales; and

(ii) by virtue of having completed that service, is entitled under a provision of that corresponding law to a long service benefit payable in or reducible to cash; and

(b) the person would, if all of that service had been performed in New South Wales, have been entitled to apply for a long service payment by virtue of section 28 (1).

(2) The personal representative of a deceased registered worker who, immediately before death, was entitled to apply for the payment of a long service benefit under subsection (1) may apply to the Corporation in the approved form for that payment to be made.

(3) A person who, in or in support of an application made under subsection (1) or (2), makes a statement that is, to that person's knowledge, false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding \$5,000.

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SCHEDULE 3—*continued*

AMENDMENTS TO PART 4 OF THE PRINCIPAL ACT—*continued*

(4) As soon as practicable after receiving an application made under subsection (1) or (2), the Corporation shall, on being satisfied that the applicant is entitled under the relevant corresponding law to the payment of a long service benefit and on being authorised by the corresponding authority to make that payment, pay to the applicant the amount of that benefit calculated in accordance with that law.

(5) An application for the payment of an amount under this section may be included in an application for a long service payment under section 28 if the periods of service to which that payment relates are consecutive and not interrupted by an interval exceeding that prescribed for the purposes of this subsection.

(6) Where the Corporation makes a payment under this section, the Corporation must, as soon as practicable after making that payment, take all appropriate steps to secure the reimbursement of the amount of that payment by the corresponding authority of the reciprocating State or Territory concerned.

(7) Where under a provision of a corresponding law that corresponds to this section the corresponding authority pays to a person an amount that, but for the payment, would have been payable as a long service payment under this Act—

- (a) the obligation of the Corporation to make that long service payment to that person is discharged; and
- (b) the Corporation shall, as soon as practicable after being notified of the payment and if satisfied that the payment was properly made, reimburse the corresponding authority accordingly.

(8) The payment of an amount by the Corporation under subsection (7) shall be made in accordance with such terms and conditions (if any) as are specified in the agreement entered into under section 55 (1) with respect to the State or Territory in which the relevant corresponding authority is established.

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## SCHEDULE 4

(Sec. 3)

## AMENDMENT TO PART 7 OF THE PRINCIPAL ACT

Section 55—

Omit the section, insert instead:

**Arrangements with other States and with Territories**

55. (1) For the purposes of this Act, the Minister may from time to time enter into an agreement, containing reciprocal arrangements with respect to the matters specified in subsection (2), with the Minister charged with administering the law of a State (other than New South Wales), or a Territory, of the Commonwealth which provides for making payments of long service benefits to persons engaged in the building and construction industry in that State or Territory.

(2) The matters referred to in subsection (1) are—

- (a) the payment of long service benefits to workers engaged in the building and construction industry;
- (b) the exchange of information concerning credits and entitlements to such payments between the Corporation and any authority established in the other State or the Territory concerned which has functions similar to those of the Corporation; and
- (c) such other matters relating to the payment of long service benefits to such workers as the Ministers may wish to agree to.

(3) An agreement entered into under subsection (1) may be varied or revoked by agreement of the Ministers concerned.

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SCHEDULE 4—*continued*

AMENDMENT TO PART 7 OF THE PRINCIPAL ACT —*continued*

(4) For the purpose of this section, the agreement made on 29 September 1986 between the Minister for Industrial Relations for the State of New South Wales and the Minister of State for Territories of the Commonwealth, which contains other reciprocal arrangements providing for recognition of workers' service in the building and construction industry, whether performed in New South Wales or in the Australian Capital Territory, shall be deemed to be an agreement entered into under subsection (1).

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SCHEDULE 5

(Sec. 4)

TRANSITIONAL PROVISION

**Interpretation**

1. In this Schedule—

“register of workers” means the register of workers kept under the Principal Act or under the repealed Act;

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

“service” means service in the building and construction industry.

**Certain workers to be restored to the register of workers kept under the Principal Act**

2. If—

(a) after 30 September 1981, the registration of a worker—

(i) was cancelled under section 19 (1) of the Principal Act (as in force before the commencement of this Act); or

(ii) ceased under section 18 (1) of the repealed Act; and

(b) the worker satisfies the Building and Construction Industry Long Service Payments Corporation that, during the period of 4 years since the worker was last entitled to be credited with service in the register of workers, the worker was

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**SCHEDULE 5—*continued***

**TRANSITIONAL PROVISION—*continued***

credited or entitled to be credited with service in a record of building and construction workers' service kept under a law of the Australian Capital Territory providing for the payment of long service benefits to such workers,

that Corporation shall restore the name of that worker to the register of workers, together with any service that was credited to that worker in that register at the time of cancellation.

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