

BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS ACT 1986 No. 19

NEW SOUTH WALES



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**BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE
PAYMENTS ACT 1986 No. 19**

NEW SOUTH WALES



Act No. 19, 1986

An Act to make provision for long service payments to workers engaged in the building and construction industry; to repeal the Building and Construction Industry Long Service Payments Act 1974; and for other purposes. [Assented to 2 May 1986.]

See also Local Government (Building and Construction Industry Long Service Payments) Amendment Act 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:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Building and Construction Industry Long Service Payments Act 1986".

Commencement

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

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"approved form" means a form approved by the Corporation;

"authorised agent" means an agent of the Corporation appointed under section 44;

"award" means an award within the meaning of the Industrial Arbitration Act 1940 or the Conciliation and Arbitration Act 1904 of the Commonwealth;

"building and construction industry" means the industry of carrying out the construction, reconstruction, renovation, alteration, demolition or maintenance or repairs of or to any of the following:

- (a) buildings;
- (b) swimming pools;
- (c) fences;
- (d) roadworks, railways, airfields or other works for the carriage of persons, animals or vehicles;

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- (e) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or watercourse for the purpose of navigation;
- (f) works for the storage or supply of water or for the irrigation of land;
- (g) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (h) bridges, viaducts, aqueducts or tunnels;
- (i) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
- (j) pipelines;
- (k) structures, fixtures or works for use in or in conjunction with any building or other works referred to in paragraphs (a) to (j) inclusive;
- (l) navigational lights, beacons or markers;
- (m) works for the drainage of land;
- (n) works for the storage of liquids, other than water, or of gases;
- (o) works for the transmission of electric power;
- (p) works for the transmission of wireless or telegraphic communications,

and includes pile driving and the preparation of the site for any building or other works referred to in paragraphs (a) to (p) inclusive;

“building and construction work” means work in the building and construction industry performed in New South Wales—

- (a) by a person who, for the majority of the person’s ordinary hours of work—
 - (i) carries out work under a contract of employment for which a rate of pay is fixed by a prescribed award; or
 - (ii) carries out work under a contract, other than a contract of employment, which would, if performed under a contract of employment, be work for which a rate of pay is fixed by a prescribed award; or

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(b) by a person who is employed under a contract of employment, as a foreman, sub-foreman or leading-hand in the supervision of the performance of any work of the kind referred to in paragraph (a) or as a clerk of works or construction supervisor;

“Committee” means the Building and Construction Industry Long Service Payments Committee constituted by section 8;

“Corporation” means the Building and Construction Industry Long Service Payments Corporation constituted by section 4;

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

“foundation worker” means a registered worker whose name was entered in the register (within the meaning of the former Act) immediately before the commencement of this Act as the name of a foundation worker;

“Fund” means the Building and Construction Industry Long Service Payments Fund established by section 10;

“long service levy” means a long service levy under Part 5, and includes an additional amount of any such levy under section 41;

“long service payment” means a long service payment under Part 4;

“register of workers” means the register of workers kept by the Corporation under section 15;

“registered worker” means a person whose name is entered in the register of workers;

“regulation” means a regulation made under this Act;

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

“standard pay” means—

(a) except as provided by paragraph (b), the amount of ordinary pay that is payable at the rate applicable for the classification “Carpenter and/or Joiner” under the Building Tradesmen (State) Construction Award published in the Industrial Gazette on 16 July 1975 in respect of work on 5 working days during those hours in which ordinary pay is payable; or

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- (b) the amount of pay prescribed by, or determined in accordance with, the regulations;

“subcontract worker” means a worker who performs work otherwise than under a contract of employment;

“worker” means any person who, under a contract, whether or not a contract of employment, performs building and construction work, however remunerated, but does not include a person of a class prescribed as exempt by the regulations or a person who performs, or supervises the performance of, any such work under a contract of employment—

- (a) with any body constituted by any Act of the Parliament of a State or of the Commonwealth (other than the Royal Agricultural Society Act 1911 or a prescribed Act); or
- (b) with the council of a city, municipality or shire or a county council;

“working day” means any day other than a Saturday, Sunday or day that is a public holiday throughout the State.

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

- (a) that work would, if it were performed in New South Wales, be building and construction work; and
- (b) an amount, in the nature of a long service levy, determined by the Corporation has been paid to the Corporation in respect of that work or an agreement has been entered into with the Corporation for the payment of that amount.

(3) 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.

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(4) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2

ADMINISTRATION

DIVISION 1—*Building and Construction Industry Long Service Payments Corporation*

Constitution of Corporation

4. (1) There is constituted by this Act a corporation under the corporate name of the “Building and Construction Industry Long Service Payments Corporation”.

(2) The affairs of the Corporation shall be managed by the Secretary.

(3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Secretary, or with the authority of the Secretary, shall be deemed to have been done by the Corporation.

(4) The Corporation—

- (a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act;
- (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister;
- (c) has perpetual succession;
- (d) shall have an official seal;
- (e) may take proceedings, and be proceeded against, in its corporate name;

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(f) 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

(g) is, for the purpose of any Act, a statutory body representing the Crown.

(5) The seal of the Corporation shall not be affixed to any instrument or document except in the presence of the Secretary, or a public servant who is for the time being authorised by the Secretary for the purpose, who shall attest by his or her signature the fact and date of the affixing of the seal.

(6) 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.

(7) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the “Long Service Payments Corporation” shall be read as a reference to the Building and Construction Industry Long Service Payments Corporation constituted by this section.

General powers of the Corporation

5. (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 exercise of its functions.

(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 by the Corporation of its functions.

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

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Staff of Corporation

6. (1) Such staff as may be necessary to enable the Corporation to exercise its functions shall be employed under the Public Service Act 1979.

(2) For the purpose of enabling the Corporation to exercise its functions, the Corporation may—

- (a) with the approval of the Minister administering a government department or an administrative office and on such terms as may be approved by the Public Service Board, make use of the services of any staff or facilities of that government department or administrative office; and
- (b) with the approval of any public authority and on such terms as may be arranged, make use of the services of any staff or facilities of that public authority.

(3) The Corporation may, with the approval of the Public Service Board, employ such casual staff as may be required by the Corporation in exercising its functions.

(4) The Public Service Act 1979 does not apply to or in respect of the employment of casual staff under subsection (3) and a person is not, as a member of that casual staff, subject to that Act.

Delegation

7. (1) The Corporation may delegate—

- (a) to a member of the staff of the Corporation or of the Department of Industrial Relations;
- (b) to a person for the time being acting in a specified position in the staff establishment of the Corporation or of the Department of Industrial Relations; or
- (c) to any person of whose services the Corporation makes use pursuant to this Act,

the exercise of any of the functions of the Corporation, other than this power of delegation.

(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and

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(c) may be revoked, wholly or partly, by the Corporation.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Corporation.

(5) A delegation under this section does not prevent the exercise of a function by the Corporation.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

DIVISION 2—Building and Construction Industry Long Service Payments Committee

Constitution of Committee

8. (1) There is constituted by this Act the Building and Construction Industry Long Service Payments Committee.

(2) The Committee shall consist of 9 members, of whom—

- (a) one, who shall be the Chairperson of the Committee, shall be the Secretary or a person for the time being nominated by the Secretary;
- (b) 3 shall be persons appointed by the Minister from a panel of 6 persons nominated by the Labor Council of New South Wales;
- (c) 3 shall be persons appointed by the Minister from a panel of 6 persons nominated jointly by the Master Builders' Association of New South Wales and the Employers' Federation of New South Wales; and
- (d) 2 shall be persons appointed by the Minister who have a knowledge of, and experience in, the building and construction industry.

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(3) Where, for the purposes of subsection (2) (b) or (c), nominations of persons to constitute a panel are not made within the time or in the manner specified by the Minister in a written notice given to the body or organisation entitled to make the nominations, the Minister may appoint a person to be a member of the Committee instead of the person required to be appointed from that panel and the person so appointed shall be deemed to have been duly nominated.

(4) Schedule 1 has effect with respect to the members and procedure of the Committee.

(5) In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Committee;
- (b) any resolution of the Committee;
- (c) the appointment of, or the holding of office by, any member of the Committee; or
- (d) the presence of a quorum at any meeting of the Committee.

(6) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject matter otherwise indicates or requires, a reference to the “Building and Construction Industry Committee” shall be read as a reference to the Building and Construction Industry Long Service Payments Committee constituted by this section.

Functions of Committee

9. (1) The Committee shall have and may exercise the functions conferred or imposed on it by Part 6 or by or under any other provision of this or any other Act.

(2) The Committee—

- (a) shall furnish to the Corporation advice and recommendations on such matters relating to the administration of this Act as are referred to it by the Corporation; and
- (b) may make recommendations to the Corporation with respect to—
 - (i) the administration of this Act;

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- (ii) the publicising to workers, employers and others of matters relating to the administration of this Act;
- (iii) the investment of the Fund; and
- (iv) the rate of any long service levy.

DIVISION 3—*Financial provisions*

Building and Construction Industry Long Service Payments Fund

10. (1) The Corporation shall establish, administer and control a fund, to be called the “Building and Construction Industry Long Service Payments Fund”.

(2) There shall be paid into the Fund—

- (a) the long service levies paid under this Act;
- (b) any money borrowed by the Corporation under this Act;
- (c) the proceeds of any investment of the Fund; and
- (d) any other amounts received by the Corporation in the course of its administration of this Act.

(3) There shall be paid from the Fund—

- (a) the long service payments provided for by this Act;
- (b) the expenses incurred in the administration of this Act and management of the Fund; and
- (c) any other payments authorised by this Act to be made from the Fund.

(4) 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.

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Investment of Fund

11. The provisions of the Superannuation Act 1916 with respect to the investment of the State Superannuation Fund apply to and in respect of the Corporation and the investment of the Fund as if the Board and the Fund referred to in those provisions were the Corporation and the Fund, respectively, within the meaning of this Act.

Financial year of Corporation

12. The financial year of the Corporation shall be the year commencing on 1 July.

Borrowing powers of Corporation

13. (1) The Treasurer may, on the application of the Corporation and on such terms and conditions as the Treasurer thinks fit, lend money to the Corporation.

(2) The Corporation may, for the purpose of obtaining temporary financial accommodation, borrow by way of overdraft from any bank but the total amount owing on all borrowings made under this subsection shall not at any time exceed \$500,000.

Actuarial investigation of Fund

14. (1) The Corporation shall cause investigations to determine the sufficiency of the Fund and the adequacy of the rate of any long service levy to be made—

- (a) as at a date (not later than 6 months after the commencement of this Act) to be determined by the Minister; and
- (b) as at a date (later than 6 months, but not later than 18 months, after the commencement of this Act) to be determined by the Minister.

(2) The Corporation shall cause further such investigations to be made as at such dates as may be determined by the Corporation but so that the interval between the dates as at which successive investigations are made does not exceed 3 years.

(3) An investigation under subsection (1) or (2) shall be made by an actuary appointed by the Corporation.

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(4) An actuary who makes an investigation under subsection (1) or (2) shall report to the Corporation the result of the investigation and shall state whether or not in his or her opinion any reduction or increase should be made in the rate of any long service levy.

(5) The actuary appointed to make an investigation referred to in this section shall complete the investigation and report the result of the investigation to the Corporation as referred to in subsection (4) as soon as practicable after the date as at which the investigation was made.

(6) The Corporation shall, as soon as practicable after it receives a report under subsection (4), forward the report to the Minister together with such comments thereon as it deems appropriate.

PART 3

REGISTRATION OF WORKERS AND SERVICE CREDITS

DIVISION 1—*Register of workers*

Corporation to keep register of workers

15. (1) The Corporation shall keep a register of workers in which it shall cause to be entered—

- (a) the names of all persons who have applied to become registered workers and whose applications have been approved;
- (b) the date on which each such person became a registered worker;
- (c) in respect of each such person, the number of days' service in the building and construction industry with which that person is credited in accordance with Division 3; and
- (d) such other information relating to workers, employers and other persons as the Corporation deems necessary for the purpose of administering this Act.

(2) The Corporation may, for the purposes of entering in the register of workers the particulars referred to in subsection (1) (c), rely on the information contained in a certificate of service furnished under section 20 (1) or a claim for service credits furnished under section 21 (1) or on such other information as the Corporation thinks fit.

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DIVISION 2—Registration of workers

Application for registration

- 16. (1)** A person may, at any time, apply to become a registered worker.
- (2)** Any such application shall be in an approved form.

Approval or refusal of application for registration

- 17.** The Corporation shall consider each application made under section 16 and shall—
- (a)** if satisfied that the applicant is a worker, approve the application; or
 - (b)** if not so satisfied, refuse the application.

Date of registration

- 18. (1)** For the purposes of section 15 (1) (b), the date on which a person becomes a registered worker is—
- (a)** except as provided by paragraph (b)—the date on which the application of the person to become a registered worker was lodged with the Corporation; or
 - (b)** such earlier date as the Corporation may, under subsection (2), fix in respect of the person or in respect of any class of persons to which the person belongs.

(2) The Corporation may, in respect of any person or class of persons, fix, for the purposes of subsection (1), an earlier date than the date on which that person or a person belonging to that class lodged an application with the Corporation to become a registered worker, but the Corporation shall not, at the request of a person, fix a date earlier than 2 years before the request to fix that earlier date was made unless it considers that special circumstances warrant its doing so.

Cancellation of registration

- 19. (1)** The Corporation shall cancel the registration of a registered worker if the registered worker has not been credited with any service in the register of workers for a period of at least 4 consecutive years.

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(2) The Corporation may at any time cancel the registration of a registered worker if it is satisfied that the person concerned is not a worker and that the person's application to become a registered worker should have been refused.

(3) Where the Corporation cancels the registration of a registered worker, it shall remove the name of the registered worker from the register of workers—

- (a) on the expiration of the period of 21 days after the Corporation notifies the registered worker of the cancellation; or
- (b) where an appeal under Part 6 is lodged against the cancellation within that period—on the date the appeal is withdrawn or the cancellation is confirmed.

(4) Upon the removal of the name of a person from the register of workers—

- (a) the person shall cease to be a registered worker; and
- (b) the person or the personal representative of the person shall not be entitled to apply for or be paid any long service payment in respect of any day's service then credited to the person in the register of workers.

(5) Nothing in this section prevents a person whose name has been removed from the register of workers in accordance with this section from subsequently becoming a registered worker.

DIVISION 3—*Service credits*

Contract of employment workers—certificates of service to be supplied by employers

20. (1) An employer who employs, under a contract of employment, a worker shall—

- (a) within 1 month after 30 June in each year, furnish to the Corporation and the worker a certificate of service in respect of the worker for the year immediately preceding that 30 June;

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- (b) within 1 month after the worker ceases to be so employed, furnish to the Corporation and the worker a certificate of service in respect of the worker for the period commencing on 1 July immediately preceding that cessation of employment and ending on that cessation of employment; and
- (c) within such time as is specified by the Corporation in a notice served on the employer, furnish to the Corporation and the worker a certificate of service in respect of the worker for the period specified in the notice.

Penalty: \$2,000.

(2) The Corporation may, in any particular case, extend the period within which an employer is required to furnish a certificate of service under subsection (1), but any such extension shall not exceed 2 months.

(3) A certificate of service under subsection (1) shall—

- (a) be in an approved form;
- (b) state whether the worker was employed by the employer during the whole of the period to which the certificate relates or, if so employed during a part only of that period, the period during which the worker was so employed;
- (c) state whether the worker was so employed in the performance of building and construction work on a full-time basis or, if not, contain such particulars as are requested in the form in respect of the time spent in the performance of building and construction work;
- (d) contain such particulars of building and construction work performed by the worker outside New South Wales as are requested in the form;
- (e) contain such other particulars as are requested in the form;
- (f) be completed in accordance with the directions contained in the form; and
- (g) be signed by the employer furnishing the certificate or by some person authorised by that employer to sign the certificate.

(4) A certificate of service under subsection (1) shall be verified in such manner (including by statutory declaration) as may be required by the Corporation.

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(5) An employer is not required to furnish a certificate of service in respect of a worker or any class of workers if—

- (a) the employer applies to the Corporation for an exemption from that requirement;
- (b) the employer satisfies the Corporation that contributions are made to a like scheme relating to the payment of long service payments to the worker or that class of workers, as the case may be, in a Territory of the Commonwealth or in a State other than New South Wales; and
- (c) the Corporation has, by notice in writing to the employer, granted the exemption and has not, by such a notice, revoked the exemption.

Subcontract workers—claims for service credits

21. (1) A registered worker may furnish to the Corporation a claim for service credits in respect of building and construction work performed by the registered worker under a contract other than a contract of employment.

(2) A claim for service credits under subsection (1) may be furnished—

- (a) within 3 months after 30 June in any year, in respect of building and construction work performed by the registered worker in the year immediately preceding that 30 June;
- (b) within 3 months after the registered worker permanently ceases work in the building and construction industry, in respect of building and construction work performed by the registered worker in the period commencing on 1 July immediately preceding that cessation of work and ending on that cessation of work; or
- (c) at such other times as the Corporation may approve in any particular case, in respect of building and construction work performed by the registered worker in the period specified by the Corporation in that approval.

(3) The Corporation may, in any particular case, extend the period within which a registered worker may furnish a claim for service credits under subsection (1).

(4) A claim for service credits under subsection (1) shall—

- (a) be in an approved form;

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- (b) specify the amount of the assessable income (within the meaning of the Income Tax Assessment Act 1936 of the Commonwealth) derived by the registered worker from the building and construction work to which the claim relates;
- (c) specify the amount of the prescribed costs incurred by the registered worker in deriving the assessable income referred to in paragraph (b);
- (d) contain such particulars of building and construction work performed by the registered worker outside New South Wales as are requested in the form;
- (e) contain such other particulars as are requested in the form;
- (f) be completed in accordance with the directions contained in the form; and
- (g) be signed by the registered worker furnishing the claim.

(5) A claim for service credits under subsection (1) shall be verified in such manner (including by statutory declaration or by a certificate signed by a registered public accountant or tax agent) as may be required by the Corporation.

(6) The regulations may make provision for or with respect to the manner of determining the assessable income and the prescribed costs referred to in subsection (4) (b) and (c).

(7) A claim for service credits may be furnished by a registered worker under subsection (1) for the purpose of obtaining service credits in accordance with section 23 (2) (c) notwithstanding that the registered worker did not perform building and construction work in the period to which the claim relates.

Contract of employment workers—service credits

22. (1) Subject to this Division, a registered worker shall be credited in the register of workers with the following number of days' service in the building and construction industry:

- (a) where the Corporation is satisfied that the registered worker was employed under a contract of employment in the performance of building and construction work during the whole of a year ending 30 June—220 days' service;

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- (b) where the Corporation is satisfied that the registered worker was employed under a contract of employment in the performance of building and construction work during a part of a year ending 30 June—the number of days' service that equals the number (rounded up to the nearest whole number) that is two-thirds of the number of days in that part of that year;
- (c) where the Corporation is satisfied that the registered worker has not performed paid work of any kind during the whole or any part of a year ending 30 June and—
 - (i) the registered worker was employed as a worker under a contract of employment and that contract was terminated by the employer;
 - (ii) since the termination of that contract, the registered worker has not performed paid work of any kind;
 - (iii) the period that, as at the end of that year, has elapsed since the termination of that contract does not exceed 4 years; and
 - (iv) had the registered worker been employed as a worker during that year or that part of that year the registered worker would have been absent from work on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for the registered worker's inability to perform building and construction work,

110 days' service or, in the case of a part of a year, the number of days' service (not exceeding 110) that equals the number (rounded up to the nearest whole number) that is two-thirds of the number of days in that part of that year.

(2) Where the Corporation is satisfied that a registered worker was employed under a contract of employment in the performance of building and construction work on a part-time basis during the whole or any part of a year ending 30 June, the number of days' service with which the registered worker would, but for this subsection, be entitled to be credited in the register of workers pursuant to subsection (1) (a) or (b) shall be reduced to the number of days' service (rounded up to the nearest whole number) that bears to the number of days' service that would but for this subsection be so credited the same proportion as the time spent by the registered worker, in the opinion of the Corporation, in the performance of building and construction work during that year or that part of that year bears to the time

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that would have been spent, in the opinion of the Corporation, in the performance of that work on a full-time basis in that year or that part of that year.

Subcontract workers—service credits

23. (1) In this section—

“minimum annual income”, in relation to a claim for service credits furnished by a subcontract worker under section 21, means the amount obtained by multiplying by 52 standard pay at—

- (a) 1 January during the period to which the claim relates; or
- (b) where 1 January does not occur during that period—1 January next preceding that period;

“subcontract worker’s income”, in relation to a claim for service credits furnished by a subcontract worker under section 21, means the amount of assessable income specified in the claim pursuant to section 21 (4) (b) less the amount of the prescribed costs specified in the claim pursuant to section 21 (4) (c).

(2) Subject to this Division, a registered worker who is a subcontract worker and who furnishes a claim for service credits under section 21 shall be credited in the register of workers with the following number of days’ service in the building and construction industry:

- (a) where the Corporation is satisfied that the subcontract worker’s income is not less than the minimum annual income—220 days’ service;
- (b) where the Corporation is satisfied that the subcontract worker’s income is less than the minimum annual income—the number of days’ service (rounded up to the nearest whole number) that equals the number that bears to 220 the same proportion as the subcontract worker’s income bears to the minimum annual income;
- (c) where the Corporation is satisfied that the subcontract worker has not performed paid work of any kind during the whole or any part of the period to which the claim relates and—
 - (i) the subcontract worker has performed building and construction work under a contract other than a contract of employment;

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- (ii) since the subcontract worker last performed any such work, the subcontract worker has not performed paid work of any kind;
- (iii) the period that, at the end of the period to which the claim relates, has elapsed since the subcontract worker last performed any such work does not exceed 4 years; and
- (iv) the subcontract worker was absent from work during the period or that part of the period to which the claim relates on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for the subcontract worker's inability to perform building and construction work,

the number of days' service (not exceeding 110) that equals the number (rounded up to the nearest whole number) that is two-thirds of the number of days the subcontract worker was so absent during the period or that part of the period to which the claim relates.

(3) Where a subcontract worker—

- (a) furnishes a claim for service credits under section 21; and
- (b) performed building and construction work under a contract of employment during a part of the period to which the claim relates,

the number of days' service in the building and construction industry with which the subcontract worker is entitled to be credited in the register of workers pursuant to subsection (2) (a) or (b) shall be calculated on the basis that—

- (c) the minimum annual income referred to in subsection (2) (a) or (b) is reduced to the amount that equals the amount that bears to the minimum annual income the same proportion as that part of that period bears to the whole of that period; and
- (d) the number 220 referred to in subsection (2) (a) or (b) is reduced to the number (rounded up to the nearest whole number) that equals the number that bears to 220 the same proportion as that part of that period bears to the whole of that period.

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Limitations on service credits

24. (1) A person shall not be credited in the register of workers with any day's service in the building and construction industry unless that day was on or after the date, shown in that register, on which the person became a registered worker.

(2) A registered worker shall not be credited in the register of workers with more than 220 days' service in the building and construction industry in respect of any year ending 30 June.

(3) Where a long service payment has been made to a registered worker pursuant to an application made under section 28 (1) (b)–(e), the registered worker shall not be credited in the register of workers with any day's service in respect of any building and construction work performed by the registered worker during the period of 1 year next following the date of that application.

Notice to registered workers of service credits

25. (1) The Corporation shall, as soon as practicable after 31 July in each year, serve on each person who on 30 June in that year was a registered worker a notice—

- (a) specifying the number of days' service in the building and construction industry, as shown in the register of workers, with which that registered worker has, in accordance with this Division, been credited in respect of the year ended on that 30 June; and
- (b) specifying the total number of days' service in the building and construction industry with which that registered worker has, in accordance with this Division, been credited.

(2) Any person on whom a notice is served under subsection (1) may, within 6 months after the service of the notice, lodge with the Corporation an objection against the accuracy of the notice in relation to the number of days specified in the notice pursuant to subsection (1) (a).

(3) The Corporation shall determine an objection lodged pursuant to subsection (2) and the determination of the Corporation shall, subject to any determination made by the Committee in an appeal under Part 6, be final and conclusive.

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(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.

Falsifying claims for service credits, etc.

26. A person shall not—

- (a) in any certificate of service furnished under section 20 (1);
- (b) in any claim for service credits furnished under section 21 (1);
- (c) in any objection lodged under section 25 (2); or
- (d) in any information furnished to the Corporation or the Committee in connection with any such certificate, claim or objection,

make a statement (not being a statement verified by statutory declaration) that is false or misleading in a material particular.

Penalty: \$5,000.

PART 4

LONG SERVICE PAYMENTS

Interpretation

27. (1) In this Part—

“prescribed retiring age” means—

- (a) except as provided by paragraph (b)—the age of 65 years;
or

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- (b) in respect of any registered worker belonging to a class or description of registered workers specified in a regulation made for the purpose of this definition—such age, being an age under 65 years, as may be specified in the regulation as the prescribed retiring age.

(2) For the purposes of this Part, a worker shall be deemed to have 1 year's service credits in the register of workers for every 220 days' service with which the worker is credited in the register of workers.

Entitlement to long service payments

28. (1) A registered worker—

- (a) who has 15 or more years' service credits in the register of workers;
- (b) who has 10 or more years' service credits in the register of workers and intends permanently to cease to work in the building and construction industry;
- (c) who has 5 or more years' service credits in the register of workers (not being credits obtained as an apprentice) and intends permanently to cease to work in the building and construction industry;
- (d) who has at least 55 days' service credits in the register of workers, has attained the prescribed retiring age and intends permanently to cease to work in the building and construction industry;
- (e) who has at least 55 days' service credits in the register of workers and whom a medical practitioner has certified to be totally incapacitated for service in the building and construction industry; or
- (f) who has 10 or more years' service credits in the register of workers—
 - (i) since first becoming entitled to apply for a long service payment (whether or not it was paid) by reason of the registered worker's being a person referred to in paragraph (a); or
 - (ii) since the registered worker would have first become so entitled but for the operation of section 31 (1) and (2),

may apply, in an approved form, to the Corporation for a long service payment.

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(2) The personal representative of a registered worker who has died and—

- (a) who, immediately before the date of the registered worker's death, was entitled to apply for a long service payment under subsection (1) (a) or (f);
- (b) who had, immediately before that date, 10 or more years' service credits in the register of workers; or
- (c) who had, immediately before that date, at least 55 days' service credits in the register of workers but was not a person referred to in paragraph (a) or (b),

may apply, in an approved form, to the Corporation for a long service payment.

(3) A person shall not, in or in support of any application made under subsection (1) or (2), make a statement that is false or misleading in a material particular.

Penalty (subsection (3)): \$5,000.

Amount of long service payment

29. (1) As soon as practicable after an application is made to the Corporation under section 28 (1) or (2), the Corporation shall, subject to subsection (2) and section 30, pay to the applicant a long service payment calculated in accordance with the following formula:

$$\text{LSP} = \frac{S}{220} \times \frac{13}{15} \times P$$

(2) Where a long service payment payable under subsection (1) is payable in respect of a registered worker who is or, immediately before the registered worker's death, was a foundation worker, that long service payment is the first such payment payable in respect of that registered worker (whether under this Act or the former Act) and the application for the payment was made under—

- (a) section 28 (1) (a), (b) or (f) or (2) (a) or (b), the payment under subsection (1) shall be increased by an amount calculated in accordance with the following formula:

$$I = P \times \frac{26}{15}$$

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(b) section 28 (1) (c) or (2) (c), the payment under subsection (1)—

- (i) shall be increased by an amount calculated in accordance with the following formula:

$$I = P \times \frac{13}{15}$$

- (ii) where the registered worker has more than 5 years' service credits in the register of workers (not being credits obtained as an apprentice)—shall be further increased in accordance with the following formula:

$$I = \frac{S - 1\,100}{220} \times \frac{13}{75} \times P$$

(c) section 28 (1) (d) or (1) (e), the payment under subsection (1) shall be increased by an amount calculated in accordance with the following formula:

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

(3) For the purposes of the formulae in subsections (1) and (2)—

LSP represents the amount of the long service payment;

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

S represents the number of days' service with which the registered worker in respect of whom the application is made is credited in the register of workers at the date on which the entitlement to the long service payment first arose or, if the application is made under section 28 (1) and the worker so requests, at the date the application is lodged with the Corporation;

P represents, at the date applicable in S—

- (a) in the case of a registered worker who, in the opinion of the Corporation, performed work under a contract of employment during the whole or a majority of the relevant period before that date—the amount of ordinary pay that is, in the opinion of the Corporation, payable for the classification of the registered worker under the award fixing a rate of pay for that work, being the amount of ordinary pay at that date in respect of work on 5 working days during those hours in which ordinary pay is payable; or
- (b) in any other case—standard pay.

(4) A reference in subsection (3) in the matter relating to P to the relevant period before any date is a reference to the last period of 55 working days before the date during which the registered worker performed building and construction work.

Long service payment not payable in certain cases

30. (1) The Corporation shall not pay to an applicant referred to in section 28 (1) (b), (c) or (d) a long service payment unless the Corporation is satisfied that the applicant intends permanently to cease work in the building and construction industry.

(2) A registered worker is not entitled to apply for or to be paid a long service payment in respect of any day's service credited to the registered worker in the register of workers if a long service payment under this Act or the former Act or a payment under section 32 of this Act or under section 19D of the former Act has been made in respect of that day.

(3) A registered worker is not entitled to any benefits under section 29 (2) if a payment under section 32 of this Act or under section 19D of the former Act has been made to an employer in respect of that registered worker.

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Election to take benefits under this Act or under Long Service Leave Act 1955

31. (1) A person who, in respect of any period of service in the building and construction industry (whether that period was before or after, or partly before and partly after, the commencement of this Act), applies for and takes or receives any benefits under the Long Service Leave Act 1955, or any benefits in the nature of long service leave under any scheme to which an exemption granted to an employer under section 5 (2) (a) of that Act relates, is not entitled to be credited pursuant to Division 3 of Part 3 with any service which the person had in that industry during any period by reference to which those benefits were calculated.

(2) A person who—

- (a) in respect of any period of service in the building and construction industry (whether that period was before or after, or partly before and partly after, the commencement of this Act) becomes entitled to any benefits referred to in subsection (1); and
- (b) in respect of any part of that period, has applied for and taken (whether before or after, or partly before and partly after, that commencement) any long service leave in advance,

is not entitled to be credited pursuant to Division 3 of Part 3 with any service which the person had in that industry during any period by reference to which that leave was calculated.

(3) A person (being a registered worker or the personal representative of a registered worker) who is paid any long service payment under this Act or the former Act is not, in respect of any period by reference to which that long service payment was calculated, entitled to any benefits under the Long Service Leave Act 1955 or any benefits in the nature of long service leave under a scheme to which an exemption granted to an employer under section 5 (2) (a) of that Act relates.

(4) Subject to this Act, a person is entitled to the benefits provided by this Act notwithstanding the provisions of any other Act.

Payments to employers

32. (1) Where—

- (a) a person is provided with any benefits referred to in section 31 (1) in respect of any period of service in the building and construction industry; and

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(b) that person—

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

(ii) is the personal representative of a person who, when the person died, was a registered worker,

the Corporation shall, upon application therefor made in writing within 3 months after those benefits were provided or within such longer period (not exceeding 12 months) as the Corporation may in any particular case allow, pay to the employer who provided those benefits an amount calculated in accordance with the following formula:

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

where—

EP represents the amount to be paid to that employer;

S represents the number of days' service with which the worker was credited in the register of workers immediately before those benefits accrued due, being days' service credited to the worker in respect of a period during which the worker was employed under a contract of employment by that employer, increased by 275 where that period commenced on the appointed day within the meaning of the former Act;

P represents, at the date those benefits accrued due—

(a) in the case of a registered worker who, in the opinion of the Corporation, performed work under a contract of employment during the whole or a majority of the relevant period before that date—the amount of ordinary pay that is, in the opinion of the Corporation, payable for the classification of the registered worker under the award fixing a rate of pay for that work, being the amount of ordinary pay at that date in respect of work on 5 working days during those hours in which ordinary pay is payable; or

(b) in any other case—standard pay.

(2) A reference in subsection (1) in the matter relating to P to the relevant period before any date is a reference to the last period of 55 working days before that date during which the registered worker performed building and construction work.

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(3) Notwithstanding subsection (1), an employer is not entitled to be paid under this section—

- (a) a greater amount in respect of a person than the value of the benefits, referred to in section 31 (1), provided by the employer in respect of that person, calculated by reference to the same period as the payment under this section is calculated; and
- (b) an amount in respect of any day's service with which a worker has been credited in the register of workers if a long service payment or a payment under this section or section 19D of the former Act has been made in respect of that day.

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

PART 5

LONG SERVICE LEVIES

Interpretation

33. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“building” has the same meaning as it has in Part XI of the Local Government Act 1919, and includes any structure or work referred to in paragraphs (a)–(j) and (l)–(p) of the definition of “building and construction industry” in section 3 (1);

“erection”, in relation to a building, has the same meaning as it has in Part XI of the Local Government Act 1919.

(2) The Corporation may, for the purposes of this Part, determine the date on which work on the erection of a building commences and the date on which work on the erection of a building is completed.

Buildings, etc., in respect of which long service levy payable

34. (1) A long service levy is payable in respect of the erection of a building if—

- (a) the approval of a council is required pursuant to Division 4 of Part XI of the Local Government Act 1919 for the erection of the building; or
- (b) such an approval would be required if—
 - (i) the building were to be erected in a local government area within the meaning of that Act;
 - (ii) the Crown, or other person or body for whom the building is being erected, were bound by that Act; or
 - (iii) the building were a building within the meaning of Part XI of the Local Government Act 1919.

(2) A long service levy is not payable—

- (a) in respect of the erection of a building if the Corporation has determined under section 33 (2) that work on the erection of the building commenced before the commencement of this Act;
- (b) in respect of the erection of a building if a long service levy has already been paid in respect of the erection of that building or of other buildings of which that building forms part; or
- (c) in such circumstances as may be prescribed.

(3) For the purposes of subsection (2) (a), the Corporation shall not determine that work has commenced on the erection of a building before the commencement of this Act unless the Corporation is satisfied that—

- (a) where the approval of a council is required pursuant to Division 4 of Part XI of the Local Government Act 1919 for the erection of the building—that approval was given before the commencement of this Act;
- (b) a contract was entered into before the commencement of this Act for the erection of the building by the person for whom the building is being erected, unless the building is being erected by that person;
- (c) a part of the building being erected was erected before the commencement of this Act; and

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- (d) work on the erection of that part of the building is a genuine commencement of work on the erection of the building.

Rate of long service levy

35. A long service levy payable in respect of the erection of a building is an amount calculated at such rate as may be prescribed of the cost of erecting the building, but not exceeding the rate of 0.6 per cent of that cost.

Date long service levy becomes payable

36. A long service levy in respect of the erection of a building is due and payable before work is commenced on the erection of the building.

Person liable to pay long service levy

37. (1) A long service levy in respect of the erection of a building is payable by—

- (a) where the approval of a council has been obtained pursuant to Division 4 of Part XI of the Local Government Act 1919 for the erection of the building—the person who made the application for that approval; or
- (b) in any other case—the person for whom the building is being erected.

(2) Where one of 2 or more persons liable to pay a long service levy in respect of the erection of a building pays that levy, the other of those persons shall not be liable to pay that levy.

The Crown and contractors to the Crown

38. (1) In this section, “Crown” includes a statutory body representing the Crown.

(2) Notwithstanding section 37, where—

- (a) a long service levy is payable in respect of the erection of a building;
- (b) the building is being erected for the Crown; and
- (c) a person has entered into a contract with the Crown to erect the building (not being a contract to execute part of the work of erecting the building),

the person is liable to pay that levy.

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(3) Notwithstanding section 37, where—

- (a) a long service levy is payable in respect of the erection of a building;
- (b) the building is being erected for the Crown;
- (c) there is no person liable to pay that levy under subsection (2); and
- (d) persons have entered into contracts with the Crown to execute parts of the work of erecting the building,

each such person is liable to pay that levy, but in the application of the provisions of this Part to any such person a reference to the erection of the building shall be construed as a reference to the execution of the work under the contract entered into by that person.

(4) Nothing in this Part shall be construed as requiring the Crown to pay a long service levy.

Offence for failure to pay long service levy

39. A person who is liable to pay a long service levy in respect of the erection of a building shall—

- (a) pay to the Corporation the amount of that levy, or of each instalment of that levy under section 43, before the due date for its payment; and
- (b) lodge with that payment a notice in the approved form relating to that payment.

Penalty: \$2,000.

Determination of cost of erecting building for purposes of this Part

40. (1) For the purposes of this Part, the cost of erecting a building is—

- (a) in the case of a building referred to in section 34 (1) (a)—the cost of erecting the building as determined by the council concerned; or
- (b) in the case of a building referred to in section 34 (1) (b)—the contract price or, if there is no contract price, the cost of erecting the building as determined by the Corporation.

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(2) Notwithstanding subsection (1), if the Corporation is satisfied that the determination of a council of the cost of erecting a building, or the contract price for erecting a building, is not a genuine and accurate estimate of the cost of erecting the building, that cost may be determined by the Corporation.

Supplementary payment of long service levies

41. (1) In this section a reference to a person liable to pay a long service levy is a reference to—

- (a) a person who has paid that levy or was liable to pay that levy when it was first due for payment as referred to in sections 37 and 38; or
- (b) subject to section 38, any other person for whom the building has been or is being erected.

(2) A person liable to pay a long service levy in respect of the erection of a building shall, if so required by the Corporation by notice in writing, furnish to the Corporation such information as is specified in the notice in relation to the actual cost of erecting the building.

Penalty: \$2,000.

(3) Where, from such information as satisfies the Corporation, it appears to the Corporation that—

- (a) any building in respect of which a long service levy is payable is wholly or partly completed;
- (b) the cost of erecting the building as then determined by the Corporation exceeds the cost of erecting the building as last determined by the Corporation; and
- (c) the amount of that excess is not less than the prescribed amount referred to in subsection (6),

the Corporation may, by notice in writing served on a person liable to pay the long service levy, require that person to pay to the Corporation, within such time as is specified in the notice, an additional amount of the long service levy so specified, being the amount calculated at the rate prescribed by section 35 on the amount of that excess.

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(4) A person on whom a notice is served under subsection (3) shall comply with the notice.

Penalty: \$2,000.

(5) A notice under this section may be served on more than one occasion in respect of the erection of the same building.

(6) For the purposes of subsection (3) (c), the prescribed amount is—

- (a) except as provided by paragraph (b)—\$10,000; or
- (b) such other amount as may be prescribed by the regulations.

Refunds of long service levies

42. (1) A person who has paid a long service levy in respect of the erection of a building, upon application in an approved form, is entitled to a refund of the amount of that long service levy if—

- (a) in the case of a building referred to in section 34 (1) (a)—the building has not been erected and the council's approval for the erection of the building is no longer in force; or
- (b) in any case—the building has not been erected and the Corporation is satisfied that the building is no longer to be erected.

(2) Where, from such information as satisfies the Corporation, it appears to the Corporation that—

- (a) the building in respect of which a long service levy has been paid is wholly or partly completed;
- (b) the cost of erecting the building as then determined by the Corporation is less than the cost of erecting the building as last determined by the Corporation; and
- (c) the amount of the difference in that cost exceeds the prescribed amount referred to in subsection (5),

the Corporation shall, upon application in an approved form, refund to the person who paid the long service levy the amount calculated at the rate prescribed by section 35 on the amount of that difference.

(3) An application for a refund under this section may be made on more than 1 occasion in respect of the erection of the same building.

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(4) An application for a refund under this section in respect of the erection of a building may not be made after the expiration of the period of 12 months after completion of work on the erection of the building, unless the Corporation considers that special circumstances warrant its being made after the expiration of that period.

(5) For the purposes of subsection (2) (c), the prescribed amount is—

- (a) except as provided by paragraph (b)—\$10,000; or
- (b) such other amount as may be prescribed by the regulations.

Payment of long service levies by instalments

43. (1) Notwithstanding anything to the contrary in this Part, the person liable to pay a long service levy in respect of the erection of a building may pay that levy by instalments in accordance with this section if the Corporation is satisfied that the cost of erecting the building exceeds the prescribed amount referred to in subsection (6) and that—

- (a) the time reasonably required to erect the building exceeds 1 year; or
- (b) the obligation of the person to pay the long service levy in a lump sum is unduly onerous.

(2) For the purposes of subsection (1)—

- (a) each instalment of a long service levy in respect of the erection of a building shall be of such amount as may be determined by the Corporation and notified to the person liable to pay that long service levy; and
- (b) the first instalment is due and payable before work is commenced on the erection of the building and the subsequent instalments are due and payable at such times before the completion of work on the erection of the building as may be so determined and notified.

(3) Where a person pays a long service levy by instalments, any instalments of that long service levy which are not due and payable—

- (a) shall not be recoverable by the Corporation; and
- (b) shall not bear interest under section 46.

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(4) Where a person fails to pay any instalment of a long service levy on or before the due date for payment of that instalment—

(a) the total amount of the instalments unpaid on that date shall become due and payable to, and recoverable by, the Corporation; and

(b) section 46 shall apply in respect of the unpaid balance of the long service levy,

as if that person were not paying the long service levy by instalments in accordance with this section.

(5) The Corporation may accept the payment of an instalment of a long service levy which is made after the due date for its payment and, for the purposes of this section, any such instalment shall, if the Corporation so directs, be deemed to have been paid on the due date for its payment.

(6) For the purposes of subsection (1), the prescribed amount is—

(a) except as provided by paragraph (b)—\$100,000; or

(b) such other amount as may be prescribed by the regulations.

Authorised agents for collection of long service levies

44. (1) The Corporation may enter into an agreement or arrangement for or with respect to the appointment of a person as its agent for the collection of long service levies.

(2) Any such agreement or arrangement may provide for the payment out of the Fund of remuneration for the authorised agent.

Certificate as to payment of long service levies

45. A certificate purporting to be signed by the Secretary or a person holding, or acting in, a prescribed office or position and certifying—

(a) that, on a date specified in the certificate, an amount of long service levy, so specified, in respect of the erection of a building so specified, was paid to the Corporation or an authorised agent of the Corporation;

(b) that, during a period so specified, an amount of long service levy in respect of the erection of a building so specified, was not so paid; or

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- (c) that no amount of long service levy was payable in respect of the erection of a building so specified,

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

Interest on, and extension of time for payment of, long service levies

46. (1) Any amount due in respect of a long service levy and not paid before the due date for its payment shall bear interest at the rate prescribed by subsection (4).

(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 levy and may be recovered as an amount due in respect of a long service levy.

(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 levy be varied to such later date as may be specified in the direction; or
- (b) 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 this Act, have effect according to its tenor.

(4) For the purposes of subsection (1), the prescribed rate is—

- (a) except as provided by paragraph (b)—2 per cent per calendar month, or part of a calendar month; or
- (b) such other rate as is prescribed by the regulations.

Recovery of long service levies

47. (1) A long service levy shall be deemed when it becomes due and payable to be a debt due to Her Majesty and payable to the Corporation.

(2) Any long service levy unpaid may be sued for and recovered in any court of competent jurisdiction by the Corporation or on behalf of the Corporation by any person appointed by it to act on its behalf.

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(3) Where, from such information as satisfies the Corporation, it appears to the Corporation—

- (a) that a building is being, or has been, erected;
- (b) that a person is liable to pay a long service levy to the Corporation in respect of the erection of the building; and
- (c) that the long service levy has not been fully paid,

the Corporation may estimate and make an assessment of the amount of the long service levy that in its opinion is due by that person in respect of the erection of the building.

(4) The Corporation shall cause notice of any such assessment to be served on the person to whom the assessment relates.

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

Penalties no relief from long service levies

48. Payment of penalties under this Act shall not relieve any person from liability to pay any long service levy to which the person would otherwise be liable.

PART 6

APPEALS TO COMMITTEE

Appeal against refusal or cancellation of registration

49. (1) A person may appeal to the Committee against a decision of the Corporation—

- (a) to refuse an application by the person to become a registered worker; or
- (b) to cancel the person's registration as a registered worker.

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(2) If the Corporation fails to give, within 3 months after receipt by the Corporation of an application by a person to become a registered worker, a decision with respect thereto, the Corporation shall, for the purposes of subsection (1) (a), be deemed to have refused the application.

(3) The Committee may, in determining an appeal under subsection (1) (a), confirm the refusal or, if satisfied that the person is a worker, approve the application by the person to become a registered worker.

(4) The Committee may, in determining an appeal under subsection (1) (b), confirm the cancellation or—

- (a) in the case of a cancellation under section 19 (1)—quash the decision of the Corporation if satisfied that the registered worker was entitled under this Act to be credited with service in the register of workers during the period of 4 years immediately preceding the cancellation; or
- (b) in the case of a cancellation under section 19 (2)—quash the decision of the Corporation if satisfied that the person concerned is a worker and that the person's application to become a registered worker was approved in accordance with this Act.

Appeal against refusal of service credits

50. (1) A person may appeal to the Committee against a decision of the Corporation to refuse to accept in whole or in part or to consider an objection made by a registered worker under section 25.

(2) The Committee may, in determining an appeal under subsection (1), confirm the refusal or quash the decision of the Corporation and determine the objection made by the registered worker in accordance with this Act.

Appeal in relation to long service levy

51. (1) A person who is aggrieved by a decision of the Corporation in connection with an assessment under section 47—

- (a) as to the cost of erecting a building in respect of which a long service levy is payable; or
- (b) as to the date on which work on the erection of such a building commenced,

may appeal to the Committee for a review of the matter.

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(2) The Committee may, in determining an appeal under subsection (1) confirm the decision of the Corporation or quash the decision of the Corporation and determine the cost of erecting the building or, as the case may require, the date on which work on the erection of the building commenced.

Appeal in relation to payment of interest on long service levies, etc.

52. (1) A person who is aggrieved by a direction given by the Corporation under section 46, or by the refusal of the Corporation to give such a direction, may appeal to the Committee for a review of the matter.

(2) Without affecting the generality of section 54, notice of appeal under subsection (1) shall—

- (a) 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; and
- (b) be accompanied by a statutory declaration verifying the particulars set out in the application.

(3) 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 (1), be deemed to have refused to give the direction.

(4) The Committee may, in determining an appeal under subsection (1)—

- (a) confirm the decision of the Corporation with respect to the direction or the refusal to give the direction; or
- (b) 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 Committee considers appropriate.

Hearing and determination of appeals by 2 or more members

53. (1) Where the Committee in any particular case or class of cases so determines, an appeal under this Part may be heard or may be heard and determined by 2 or more members of the Committee appointed by the Committee for the purpose.

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(2) Where an appeal is heard but not determined by 2 or more members of the Committee pursuant to subsection (1), the determination of the appeal shall be made by the Committee at a meeting at which a quorum is present.

(3) Where an appeal is heard and determined by 2 or more members of the Committee pursuant to subsection (1), the determination of the appeal shall be deemed to have been made by the Committee.

Appeals—general provisions

54. (1) An appeal under this Part shall be made—

- (a) except as provided by paragraph (b)—within 21 days after the appellant is notified of the decision appealed against; or
- (b) within such other time as may be prescribed in respect of the appeal.

(2) The manner of making and the procedure for hearing and determining an appeal under this Part shall, subject to any regulation relating thereto, be as determined by the Committee.

(3) The Committee may at any time refer the matter the subject of an appeal under this Part to the Corporation for reconsideration.

(4) The determination of the Committee in respect of an appeal under this Part shall be deemed to be the final decision of the Corporation and shall be given effect to by the Corporation.

(5) Notwithstanding subsection (4), in proceedings in any court a plea of issue estoppel shall not be available in respect of an issue decided by the Committee.

PART 7

MISCELLANEOUS

Arrangements with other States and Territories

55. (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 credits and entitlements to long service payments between the Corporation and any equivalent authority established under the corresponding law; and
- (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,

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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).

Keeping of books and records

56. (1) A person who employs workers, whether or not under a contract of employment, shall keep such books and records as may be prescribed containing such particulars as may be prescribed relating to those workers.

(2) A subcontract worker shall keep such books and records as may be prescribed containing such particulars as may be prescribed relating to building and construction work performed by the subcontract worker.

(3) A person who is required by subsection (1) or (2) to keep any book or record shall preserve the book or record for a period of at least 6 years after the last entry was made in it.

Penalty: \$2,000.

Service of notices or other documents

57. (1) A notice or other document that may be served by the Corporation or the Committee under this Act may be served—

- (a) by delivering it personally to the person to whom it is addressed;
- (b) where it is addressed to a registered worker—
 - (i) by delivering it to any place shown in the register of workers as the registered worker's place of abode or business and by leaving it there with some person for the registered worker; or
 - (ii) by posting it in an envelope duly stamped and addressed to the registered worker to whom it is addressed at any place shown in the register of workers as the registered worker's place of residence or business; or

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(c) where it is addressed to a person other than a registered worker—

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

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

and shall be deemed to have been served upon its being so delivered or, in the case of a notice or document served as referred to in paragraph (b) (ii) or (c) (ii), shall be prima facie deemed to have been served when it would be delivered in the ordinary course of post.

(2) A notice or other document may be served on the Corporation or the Committee by leaving it at, or by sending it by post to—

(a) the office of the Corporation or the Committee, as the case may be; or

(b) if it has more than one office—any one of its offices.

(3) Nothing in subsection (1) or (2) affects the operation of any provision of a law or of the rules of a court authorising a notice or other document to be served in a manner not authorised by that subsection.

Power of entry and inspection

58. (1) In this section, “premises” includes any structure, building and place (whether built upon or not), and any part thereof.

(2) Subject to this section, any person authorised in writing by the Corporation may—

(a) enter any premises for the purpose of ascertaining whether any work being performed in the premises is work being performed by a worker;

(b) require a person to produce, at such time and place as the authorised person may specify, any books, records or other documents required to be kept by the person under this Act;

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- (c) where under section 56 the prescribed books and records referred to in that section may be kept by a person in a form otherwise than in the English language, require that person to provide, at such time and place as the authorised person may specify, a copy of those books or records, or any part of them specified in the requirement, translated into the English language;
- (d) where under section 56 the prescribed books and records referred to in that section may be kept by recording or storing the matters concerned by means of a mechanical, electronic or other device, require that person to provide, at such time and place as the authorised person may specify, a document containing a clear reproduction in writing of the whole or part of those matters; and
- (e) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act and the regulations have been complied with.

(3) Subsection (2) does not authorise any person to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

(4) A person shall not wilfully delay or obstruct a person authorised under subsection (2) in the exercise of the person's functions under subsection (2) (a) or (e) or, being the occupier of any premises, refuse to permit or to assist a person so authorised to exercise those functions.

Penalty: \$5,000.

(5) A person shall not neglect or fail to comply with a requirement made under subsection (2) (b), (c) or (d).

Penalty: \$5,000.

(6) Every person authorised under subsection (2) shall be provided by the Corporation with a certificate of authority, and on applying for admission to any premises which the person is empowered by this section to enter shall, if requested to do so, produce the certificate to the occupier of the premises.

Disclosure of information

59. (1) Subject to subsection (2), a person who is, or was at any time, authorised under section 58 shall not disclose any information relating to any manufacturing or commercial secrets or working processes and obtained by the person in connection with the administration or execution of this Act or the regulations.

Penalty: \$5,000.

(2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is—

- (a) made in connection with the administration or execution of this Act or the regulations;
- (b) made with the prior permission of the Minister; or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

(3) The Minister may grant the permission referred to in subsection (2) only if the Minister is satisfied that to do so would be in the public interest.

Authentication of certain documents by Corporation

60. 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 Secretary.

Recovery of charges, etc., by Corporation

61. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Protection from liability

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

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Offences by corporations

63. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence against the provision is actually committed.

Proceedings for offences

64. (1) Proceedings for offences against this Act or the regulations shall be dealt with summarily before—

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the chief industrial magistrate.

(2) The provisions of the Industrial Arbitration Act 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales apply to proceedings before the chief industrial magistrate for offences against this Act or the regulations as if the proceedings under this Act were proceedings under that Act.

(3) Notwithstanding anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 1 year after the act or omission alleged to constitute the offence.

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Regulations

65. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$500.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Repeals

66. Each Act specified in Schedule 2 is, to the extent indicated therein, repealed.

Savings, transitional and other provisions

67. Schedule 3 has effect.

SCHEDULE 1

(Sec. 8 (4))

PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF COMMITTEE**Interpretation**

1. In this Schedule—

- “appointed member” means a member other than the Chairperson;
- “Chairperson” means the Chairperson of the Committee;
- “member” means a member of the Committee.

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SCHEDULE 1—*continued*PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF COMMITTEE—
*continued***Term of office**

2. An appointed member shall hold office for such period (not exceeding 3 years) as may be specified in the instrument of appointment unless sooner removed from office by the Minister.

Removal from office

3. The Minister may at any time remove an appointed member from office.

Filling of vacancy

4. In the event of the office of an appointed member becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

Remuneration

5. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the appointed member.

Effect of other Acts

6. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of an appointed member and an appointed member is not, as a member, subject to that Act.

(2) Where by or under any other Act provision is made requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

Deputies for members

7. (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member.

(2) A person shall not be appointed under subclause (1) as the deputy of—

- (a) an appointed member referred to in section 8 (2) (b), unless the person is appointed from the same panel as that from which the member was appointed or the person is appointed from a further panel of 6 persons nominated by the Labor Council of New South Wales; or
- (b) an appointed member referred to in section 8 (2) (c), unless the person is appointed from the same panel as that from which the member was appointed or the person is appointed from a further panel of 6 persons nominated jointly by the Master Builders' Association of New South Wales and the Employers' Federation of New South Wales.

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SCHEDULE 1—*continued*PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF COMMITTEE—
continued

(3) Two or more persons may be appointed under subclause (1) as deputies from a single further panel of 6 persons referred to in subclause (2) (a) or (b).

(4) A deputy of an appointed member under subclause (1) may, in the absence of the appointed member or during a vacancy in the office of the appointed member, act in the office of the appointed member and, while so acting, shall have all the functions of the appointed member and shall be deemed to be an appointed member.

General procedure of the Committee

8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Committee.

Quorum

9. The quorum for a meeting of the Committee is 5 members.

Presiding member

10. (1) The Chairperson shall preside at all meetings of the Committee at which the Chairperson is present and, if the Chairperson is absent from any meeting, a member elected by the members present shall preside at that meeting.

(2) The person presiding at any meeting of the Committee shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

Decision of Committee

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

Minutes

12. The Committee shall cause full and accurate minutes to be kept of the proceedings at its meetings and shall submit to the Corporation a copy of the minutes of each meeting within 14 days after the day on which it was held.

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SCHEDULE 2

(Sec. 66)

REPEALS

- Building and Construction Industry Long Service Payments Act 1974 No. 98—the whole Act.
- Building and Construction Industry Long Service Payments (Amendment) Act 1976 No. 73—the whole Act.
- Building and Construction Industry Long Service Payments (Investment) Amendment Act 1980 No. 52—the whole Act.
- Building and Construction Industry Long Service Payments (Amendment) Act 1980 No. 123—the whole Act.
- Miscellaneous Acts (Companies) Amendment Act 1981 No. 123—so much of Schedule 8 as relates to the Building and Construction Industry Long Service Payments Act 1974.
- Building and Construction Industry Long Service Payments (Amendment) Act 1982 No. 44—the whole Act.
- Building and Construction Industry Long Service Payments (Amendment) Act 1983 No. 23—the whole Act.
- Building and Construction Industry Long Service Payments (Further Amendment) Act 1983 No. 130—the whole Act.
- Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 1 as relates to the Building and Construction Industry Long Service Payments Act 1974.
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SCHEDULE 3

(Sec. 67)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Interpretation

1. In this Schedule—

“former Committee” means the Building and Construction Industry Committee constituted under section 20 of the former Act;

“former Corporation” means the Building and Construction Industry Long Service Payments Corporation constituted by section 4A (1) of the former Act.

Continuity of Corporation

2. The Corporation is a continuation of, and the same legal entity as, the former Corporation.

*Building and Construction Industry Long Service Payments 1986*SCHEDULE 3—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Former Committee**

3. (1) On the commencement of this Act—
- (a) the former Committee is abolished; and
 - (b) the persons who were members and alternate members of that Committee immediately before that commencement cease to hold office as such.

(2) If, on the commencement of this Act, the Minister has not appointed the first members of the Committee under section 8 (2) (b) and (c), the persons referred to in subclause (1) who were members or alternate members of the former Committee shall be deemed to be members or alternate members, as the case may be, of the Committee until the first appointment of members is made under section 8 (2) (b) and (c).

First meeting of Committee

4. The Minister shall call the first meeting of the Committee after the commencement of this Act in such manner as the Minister thinks fit.

Applications and matters pending before former Committee, etc.

5. (1) Any application or matter pending before the former Committee immediately before the commencement of this Act may, if the determination of the matter is necessary for the purposes of this Schedule, be determined by the Committee as if this Act had not been enacted, and shall have effect as if it had been determined under the former Act.

(2) Any application concerning a matter under this Schedule that, but for the enactment of this Act, might have been made to the former Committee under the former Act, may be made to and determined by the Committee as if this Act had not been enacted, and shall have effect as if it had been determined under the former Act.

References to former Committee and former Act

6. After the commencement of this Act, in any other Act, in any instrument made under any Act or in any other instrument of any kind—

- (a) a reference to the former Committee shall be read as a reference to the Committee; and
- (b) a reference to the former Act shall be read as a reference to this Act.

Continuation of the Fund

7. The Building and Construction Industry Long Service Payments Fund established by section 5 of the former Act shall be deemed to be established, on the commencement of this Act, as the Building and Construction Industry Long Service Payments Fund pursuant to section 10.

Continuation of registration of workers under former Act

8. A person who was, immediately before the commencement of this Act, a registered worker under the former Act shall, on that commencement, be deemed to be a registered worker under this Act.

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SCHEDULE 3—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Continuation of register of workers**

9. (1) The register which, immediately before the commencement of this Act, was kept by the former Corporation under section 10 of the former Act shall, on that commencement, be deemed to be the register of workers under section 15.

(2) The Corporation may amend the register of workers—

- (a) to delete particulars entered into that register pursuant to the former Act, but which are not required for the purposes of this Act; and
- (b) to make any corrections to the particulars entered in that register before the commencement of this Act in order that those particulars accord with this Act and with the provisions of the former Act, or any Act amending that Act, that were applicable to the entry.

Allocation of service credits after commencement of this Act

10. (1) A certificate of service under section 20 (1) is not required to be furnished by an employer in respect of a period before the commencement of this Act, except where the employer is required to do so pursuant to a notice under section 20 (1) (c).

(2) A claim for service credits under section 21 (1) may not be furnished in respect of a period before the commencement of this Act, except a period approved pursuant to section 21 (2) (c).

(3) Nothing in this clause affects the operation of Division 3 of Part 3 in respect of a person who lodges an application to become a registered worker after the commencement of this Act but who is deemed pursuant to this Act to have become a registered worker before that commencement.

(4) If this Act commences on a date other than 1 July in any year, a certificate of service under section 20 (1) (a) or a claim for service credits under section 21 (2) (a) shall be furnished in respect of the period from the commencement of this Act to the next following 30 June.

Prescription of certain matters pending the making of regulations

11. Until the regulations otherwise provide—

- (a) for the purposes of paragraph (a) (i) and (ii) of the definition of “building and construction work” in section 3 (1), the prescribed awards are as follows:

PART 1

Awards made under the Industrial Arbitration Act 1940:

- (i) Builders' Labourers Construction on Site (State) Award published 21 December 1977, as varied;
- (ii) Building Crane Drivers (State) Award published 9 March 1977, as varied;

*Building and Construction Industry Long Service Payments 1986*SCHEDULE 3—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (iii) Building Tradesmen (State) Construction Award published 16 July 1975, as varied;
- (iv) Gangers (State) Award published 29 January 1975, as varied;
- (v) General Construction and Maintenance, Civil and Mechanical Engineering &c. (State) Award published 21 December 1977, as varied;
- (vi) The Joiners (State) Award published 17 November 1982, as varied;
- (vii) Electricians &c. (State) Award published 3 February 1982, as varied;
- (viii) Plumbers and Gasfitters (State) Award published 11 July 1984, as varied;
- (ix) Plant, &c., Operators on Construction (State) Award;

PART 2

Awards made under the Conciliation and Arbitration Act 1904 of the Commonwealth:

- (x) Building Construction Employees and Builders Labourers Award, 1978 (Federal) Consolidated 1983;
 - (xi) The Joiners (N.S.W.) Award;
 - (xii) National Building Trades Construction Award (Federal);
 - (xiii) Sprinkler Pipe Fitters Award (Federal);
- (b) for the purposes of the definition of “prescribed retiring age” in section 27 (1)—
- (i) registered workers who have been granted pensions under section 84 of the Repatriation Act 1920 of the Commonwealth are a specified class; and
 - (ii) the prescribed retiring age in respect of such a worker is the age at which, under that Act, the worker became eligible to be granted such a pension.

Continuation of staff

12. A person who was a member of the staff of the Corporation immediately before the commencement of this Act does not cease to be a member of that staff by reason only of the repeal of the former Act.

Long service charges under former Act

13. (1) The provisions of the former Act and the regulations thereunder relating to long service charges payable under that Act in respect of any period before the commencement of this Act continue to apply to long service charges paid before that commencement and long service charges due but not paid before that commencement.

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SCHEDULE 3—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) In the application of the provisions of section 27 of the former Act, as referred to in subclause (1), to any overpaid long service charges the words “within two years after the date of overpayment” shall be deemed to be omitted from that section.

(3) The Corporation shall write off any long service charges payable by a person under the former Act in respect of any period before 1 February 1981 if—

- (a) the Corporation is satisfied that all other long service charges payable by the person under the former Act have been paid before the expiration of 6 months after the commencement of this Act; and
- (b) the Minister approves of those charges being written off.

(4) Proceedings for an offence against the former Act in respect of a failure to pay any long service charges under that Act shall not be instituted if those long service charges have been written off under subclause (3).

Payments to registered employers in respect of unregistered workers

14. Where, immediately before the commencement of this Act, a registered employer under the former Act is credited in the employers’ register under the former Act with a number of successive working days in respect of a worker, the worker shall, for the purposes of any payment to that employer under section 32—

- (a) be deemed to be a registered worker in the period during which those working days occur; and
- (b) be deemed to have been credited in the register of workers with that number of successive days’ service.

Interpretation Act 1897

15. Nothing in this Schedule affects the operation of section 8 of the Interpretation Act 1897.

Regulations

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

(2) A provision referred to in subclause (1) may take effect as from the commencement of this Act or a later date.

(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 an authority of the State), 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 an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

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SCHEDULE 3—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

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