

# Building and Construction Industry Long Service Payments Act 1986 No 19

[1986-19]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Building and Construction Industry Long Service Payments Amendment Act 1998 No 33](#), Sch 1 [8] and so much of Sch 1 [24] as would insert sec 24 (5) (not commenced)
- **See also**  
[Public Sector Employment Legislation Amendment Bill 2006](#)

### Authorisation

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New South Wales

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# Building and Construction Industry Long Service Payments Act 1986 No 19



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

- (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.

### 3 Definitions

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

**approved** means approved by the Corporation.

**authorised agent** means an agent of the Corporation appointed under section 44.

**award** means a State industrial instrument or a Commonwealth industrial instrument.

**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,
  - (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, being:

- (a) work carried out under a contract of employment for which a rate of pay is fixed by an award prescribed by the regulations, or
- (b) work:
  - (i) carried out under a contract that is not a contract of employment, and
  - (ii) that would, if it had been carried out under a contract of employment, be work for which a rate of pay was fixed by an award prescribed by the regulations, or
- (c) the work of a person who, under a contract of employment:
  - (i) directly supervises work of the kind referred to in paragraph (a) or (b), or

(ii) is a clerk of works.

**Chief Executive Officer** means the Chief Executive Officer of the WorkCover Authority.

**Committee** means the Building and Construction Industry Long Service Payments Committee constituted by section 8.

**Commonwealth industrial instrument** means:

- (a) an award (as defined by section 4 of the [Workplace Relations Act 1996](#) of the Commonwealth), or
- (b) a certified agreement (as defined by section 4 of the [Workplace Relations Act 1996](#) of the Commonwealth), or
- (c) an Australian workplace agreement (as defined by section 4 of the [Workplace Relations Act 1996](#) of the Commonwealth), or
- (d) an enterprise flexibility agreement (as defined by section 4 of the [Workplace Relations Act 1996](#) of the Commonwealth as in force immediately before the commencement of Schedule 9 to the [Workplace Relations and Other Legislation Amendment Act 1996](#) of the Commonwealth) that continues to have effect because of Part 2 of that Schedule.

**Corporation** means the Building and Construction Industry Long Service Payments Corporation constituted by section 4.

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

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

**financial year** means a year commencing on 1 July.

**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.

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

**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.

**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
- (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 a council or a county council within the meaning of the [Local Government Act 1993](#).

**working day** means a day on which ordinary rates of pay are payable.

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

- (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 within the Act to a development consent under the *Environmental Planning and Assessment Act 1979* includes a reference to an approval under Part 3A of that Act.
- (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.
- (5) For the purposes of this Act, a worker shall be deemed to have a year's service for every 220 days' service that is credited to the worker in the register of workers kept under this Act or for every period of service that is considered to be a year's service under a corresponding law.
- (6) Subject to subsection (7), the Governor may, by order published in the Gazette:
  - (a) declare a State or Territory of the Commonwealth in relation to which an agreement entered into under section 55 (1) is in force to be a reciprocating State or a reciprocating Territory as the case requires, and
  - (b) declare a law of such a State or Territory to be a corresponding law for the purposes of this Act.

**Editorial note—**

For orders under this subsection see Historical notes at the end of this Act.

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

## **Part 2 Administration**

### **Division 1 Building and Construction Industry Long Service Payments Corporation**

#### **4 Constitution of Corporation**

- (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 Chief Executive Officer.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Chief Executive Officer, or with the authority of the Chief Executive Officer, 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,
  - (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 Chief Executive Officer, or a public servant who is for the time being authorised by the Chief Executive Officer 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.

## **5 General powers of the Corporation**

- (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.

## **6 Staff of Corporation**

- (1) Such staff as may be necessary to enable the Corporation to exercise its functions shall be employed under the *Public Sector Management Act 1988*.
- (2) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public authority.
- (3) The Corporation may, with the approval of the Chief Executive Officer, employ such casual staff as may be required by the Corporation in exercising its functions.
- (4) The *Public Sector Management Act 1988* 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.

## **7 Delegation**

- (1) The Corporation may delegate:
  - (a) to a member of the staff of the Corporation or of the WorkCover Authority,
  - (b) to a person for the time being acting in a specified position in the staff establishment of the Corporation or of the WorkCover Authority, 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
  - (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**

### **8 Constitution of Committee**

- (1) There is constituted by this Act the Building and Construction Industry Long Service Payments Committee.
- (2) The Committee shall consist of 11 members, of whom:
  - (a) one, who shall be the Chairperson of the Committee, shall be the Chief Executive Officer or a person for the time being nominated by the Chief Executive Officer,
  - (b) 3 shall be persons appointed by the Minister from a panel of 6 persons nominated by Unions NSW,
  - (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 Employers First, and
  - (d) 4 shall be persons appointed by the Minister who have a knowledge of, and experience in, the building and construction industry.
- (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.

## **9 Functions of Committee**

- (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,
    - (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**

### **10 Building and Construction Industry Long Service Payments Fund**

- (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.

#### **11 (Repealed)**

#### **12 Financial year of Corporation**

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

#### **13 Borrowing powers of Corporation**

(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, building society or credit union but the total amount owing on all borrowings made under this subsection shall not at any time exceed \$500,000.

#### **14 Actuarial investigation of Fund**

(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.

(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**

#### **15 Corporation to keep register of workers**

- (1) The Corporation shall keep a register of workers in which it shall cause to be entered:
  - (a) the names of all persons whose registration is approved under section 17,
  - (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.

### **Division 2 Registration of workers**

#### **16 Applications for registration**

- (1) A person may at any time apply to the Corporation to be registered as a worker.
- (2) An employer who employs a worker under a contract of employment must apply to the Corporation for registration of the worker within 7 days after the worker commences to perform building and construction work in New South Wales under that contract, unless the worker is already registered or has lodged an application for registration that has not been determined.

Maximum penalty: 20 penalty units.



(3) An application must be made in the approved form.

### **17 Registration**

The Corporation is to approve the registration of every person by or in respect of whom an application has been made and who the Corporation is satisfied is a worker.

### **18 Date of registration**

- (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 application for the person's registration 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.

### **19 Cancellation or suspension of registration**

- (1) In this section, **non-service day**, in respect of a registered worker, means a day in respect of which the worker did not accumulate a service credit (not being a day prescribed by the regulations as a day to be disregarded in calculations made under subsection (1A) or (1B) in respect of the worker).
- (1A) The Corporation is to cancel the registration of a registered worker who has not been credited with at least 5 years' service in the register of workers if non-service days amounting to 4 years have elapsed since the last date in respect of which the worker was credited with service under this Act or in a record of building and construction workers kept under a corresponding law.
- (1B) The Corporation may suspend the registration of a registered worker who has been credited with at least 5 years' service in the register of workers if non-service days amounting to 4 years have elapsed since the last date in respect of which the worker was credited with service under this Act or in a record of building and construction workers kept under a corresponding law.
- (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.

(2A) The Corporation is to cancel the registration of a worker:

(a) on the making of any payment in accordance with section 28 (1) (c), (d) or (e), or section 28 (2), in respect of the worker, or

(b) at the request of the worker,

and on such cancellation the name of the worker may be removed from the register of workers.

(3) Where the Corporation cancels the registration of a registered worker under subsection (1A) or (2), it shall remove the name of the registered worker from the register of workers:

(a) on the expiration of the period of 42 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.

(6) The Corporation may:

(a) restore a suspended registration at any time, or

(b) restore a cancelled registration:

(i) at any time within 6 years after the date of cancellation, if the Corporation is satisfied that special circumstances exist warranting reinstatement, or

(ii) at any time, if required to do so in accordance with an agreement in force under section 55.

(7) Restoration under subsection (6) (b) (i) of a cancelled registration may be taken by the Corporation to be effective from any date within 6 years after the date of cancellation.

## **Division 3 Service credits**

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

- (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,
  - (b) within 7 days (or such other time as may be prescribed by the regulations) 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.

Maximum penalty: 20 penalty units.

- (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 written, electronic or other 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) 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 required by the Corporation, and
  - (f) be completed in accordance with any directions given by the Corporation.
  - (g) (Repealed)
- (4) A certificate of service under subsection (1) must be verified in such manner as the Corporation may require.

- (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.

## **21 Subcontract workers—claims for service credits**

- (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 12 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 12 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 or class of cases, 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 written, electronic or other form,
  - (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 required by the Corporation, and
  - (f) be completed in accordance with any directions given by the Corporation.
  - (g) (Repealed)
- (5) A claim for service credits under subsection (1) must be verified in such manner as the Corporation may require.
- (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 notwithstanding that the registered worker did not perform building and construction work in the period to which the claim relates.

## **22 Service credits for building and construction work**

- (1) A registered worker who was employed on a full-time basis under a contract of employment in the performance of building and construction work for the whole of a financial year is entitled to be credited in the register of workers with 220 days' service.
- (2) A registered worker who was so employed for a period consisting of part of a financial year only is entitled to be credited in the register of workers with a number of days' service equal to two-thirds of the number of days in that period.
- (3) A registered worker:
- (a) who was employed on a part-time basis under a contract of employment in the performance of building and construction work, or
  - (b) who was employed in the performance of building and construction work and other work,
- during the whole or any part of a financial year is entitled to be credited in the register of workers with a number of days' service equivalent to the number of full days (as calculated by the Corporation) of employment in building and construction work.
- (4) A registered worker who was a subcontract worker performing building and construction work and who lodges a claim for service credits under section 21 is entitled to be credited in the register of workers with:
- (a) 220 days' service, if the worker's annual income was not less than the minimum

annual income, or

(b) a number of days' service that bears to 220 the same proportion as the worker's annual income bears to the minimum annual income, in any other case.

(5) In this section:

**income** of a subcontract worker means the amount of assessable income specified, pursuant to section 21 (4) (b), in the subcontract worker's claim under section 21 less the amount of the prescribed costs specified, pursuant to section 21 (4) (c), in the claim.

**minimum annual income** of a subcontract worker means an amount equal to 52-times standard pay, calculated as at 1 January last preceding the end of the period to which the worker's claim under section 21 relates.

(6) This section has effect subject to section 24.

### **23 Service credits in other cases**

(1) A registered worker who:

- (a) performed building and construction work under a contract (whether or not a contract of employment) that was terminated (whether by the worker or the employer), and
- (b) has not, since the termination of that contract, performed paid work of any kind, and
- (c) in the financial year in which the contract was terminated, or in any of the 3 subsequent financial years, suffered an illness or injury that is certified in writing by a medical practitioner to be of such a nature as to render the registered worker reasonably unable to perform building and construction work (whether or not any such work was available for the registered worker and whether or not the illness or injury existed before the registered worker last performed any such work),

is entitled to be credited in the register of workers with a number of days' service determined by the Corporation to be equivalent to the number of full days during which the worker was certified as being unable to perform building and construction work.

(2) A registered worker who:

- (a) performed building and construction work under a contract (whether or not a contract of employment) that was terminated (whether by the worker or the employer), and
- (b) has not, since the termination of that contract, performed paid work of any kind,

and

(c) has, since the termination of that contract, in any financial year undertaken a training course recognised by the Corporation as being relevant to the building and construction industry in order to enhance the registered worker's prospects of being employed in the industry,

is entitled to be credited in the register of workers with a number of days' service determined by the Corporation to be equivalent to the number of full days spent undertaking the course while unemployed during that year.

- (3) A registered worker who in any financial year performs voluntary work in the nature of building and construction work in New South Wales as a result of an emergency declared or otherwise recognised under the *State Emergency and Rescue Management Act 1989* or under any similar Act of the State or of the Commonwealth, is entitled to be credited in the register of workers with a number of days' service determined by the Corporation to be equivalent to the number of full days spent performing that voluntary work during that year.
- (4) A registered worker who in any financial year performs light duty work assigned to the worker in accordance with the *Workers Compensation Act 1987*, while partially incapacitated for work as a result of an injury (as defined in that Act) sustained while performing building and construction work is entitled to be credited in the register of workers with a number of days' service determined by the Corporation to be equivalent to the number of full days spent performing that light duty work during that year.
- (5) Subsection (4) does not apply in respect of light duty work performed during a financial year that commenced more than 3 years after the date of the relevant injury.
- (6) A registered worker who in any financial year performed unpaid work in the nature of building and construction work on a residential building (being a building constructed or acquired by the worker solely for the purpose of subsequent sale by the worker) is entitled to be credited in the register of workers with a number of days' service determined by the Corporation to be equivalent to the number of full days spent performing that unpaid work while unemployed during that year.
- (7) Without limiting the power of the Corporation to determine a number of days' service to be equivalent, for the purposes of an entitlement under this section, to a number of full days in a period during which such an entitlement arises, the Corporation may, in the case of any such period that is greater than one week, determine that two-thirds of the number of days in the period is the proper service equivalent.
- (8) Entitlements under this section must be claimed by the registered worker concerned, who must make out the claim to the satisfaction of the Corporation.

(9) This section has effect subject to section 24.

#### **24 Limitations on and adjustments of service credits**

(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. 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 financial year.

(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.

(2A) Where:

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

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

the period of service with which the worker may be credited in the register of workers kept under this Act shall be adjusted as prescribed.

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

(a) on the making of an application under this Act or under a corresponding law for a long service payment to be made or a long service benefit to be paid in respect of a period of service that includes either or both of the periods of service referred to in that subsection, or

(b) at such other times as the Corporation may decide.

(3) Where:

(a) a long service payment is made to a person as a result of an application made under section 28 (1) by virtue of the person's having fulfilled the requirements specified in section 28 (1) (c) or (d), or

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

the person shall not be credited in the register of workers with any day's service in respect of building and construction work performed by that person during that period



of 12 months immediately following the date of that application.

- (4) Section 32, however, applies to each day's service referred to in subsection (3) as though it had been credited to the worker.
- (6) A service credit that, calculated in accordance with section 22 or 23, results in a number of days consisting of a whole number plus a fraction is to be adjusted to the next succeeding whole number.

## **25 Notice to registered workers of service credits**

- (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.
- (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 date of the work, activity or circumstance to which the objection relates, or
  - (b) the Corporation considers that special circumstances warrant its doing so.
- (5) Nothing in this section requires the Corporation to serve notice on a person who the Corporation has reason to believe is no longer to be found at the address last entered in the register of workers as the person's place of residence or business and for whom no other address for service (including any destination for electronic transmission) is known to the Corporation.
- (6) Without limiting the generality of subsection (5), notice is not required to be served on

a person for whom no more current address is known if the last 2 notices sent by the Corporation by post to the address last entered in the register of workers as the person's place of residence or business have been returned to the sender.

**26 (Repealed)**

**Part 4 Long service payments**

**27 Definition**

(1) In this Part:

***prescribed retiring age*** means:

- (a) except as provided by paragraph (b)—the age of 55 years, or
- (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 55 years, as may be specified in the regulation as the prescribed retiring age.

(2) (Repealed)

**28 Entitlement to long service payments**

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

- (a) the person has completed 10 years' service as a worker,
- (b) (Repealed)
- (c) the person has completed 5 years' service as a worker and satisfies the Corporation that he or she has permanently ceased to perform building and construction work,
- (d) the person has completed 55 days' service as a worker and, having attained the prescribed retiring age, satisfies the Corporation that he or she has permanently ceased to perform building and construction work,
- (e) the person has completed 55 days' service as a worker and a registered medical practitioner has certified the person to be totally and permanently incapacitated for building and construction work,
- (f) the person has completed 5 years' service as a worker since the person:
  - (i) first became entitled to apply for a long service payment by virtue of paragraph (a), or
  - (ii) would have become so entitled but for the operation of any provision of

section 31,

whether or not any such payment was made, or

(g) the person has completed 5 years' service as a worker since the person:

(i) last became entitled to apply for a long service payment under paragraph (f), or under any previous application of this paragraph, or

(ii) would have become so entitled but for the operation of any provision of section 31,

whether or not any such payment was made.

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

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

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

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

(3) A payment made by the Corporation in respect of an application under subsection (2) is valid and effectual against any demand in respect of the payment by any other person.

(3A) If payment is made in respect of an application under subsection (2), before the grant of letters of administration of the estate, to the personal representative of a person who died intestate, the personal representative holds the payment subject to the same trusts as if he or she had obtained such a grant.

(3B) A payment must not be made in respect of an application under subsection (2) after evidence has been produced to the Corporation of the grant of letters of administration of the estate, or probate of the will, of the deceased person, except to the person who has obtained the letters of administration or probate of the will (as appropriate).

(4) In this section:

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

(b) a reference to a period of service, in relation to a person, does not include a

period of service in respect of which the person has previously received a long service payment by virtue of subsection (1) (c), (d) or (e) or a corresponding provision of the former Act or has previously received a long service benefit by virtue of a corresponding provision of a corresponding law.

- (5) In this section, **personal representative**, in relation to a payment in respect of a person who has died, means:
- (a) in the case of a person who died wholly or partially intestate—any person who appears to the Corporation to be entitled to obtain a grant of letters of administration of the estate of the person, and
  - (b) in the case of a person who died testate—any person who appears to the Corporation to be entitled to receive the relevant payment under the will of the person.

## 29 Amount of long service payment

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

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

- (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—shall be further increased in accordance with the following formula:

$$I = \frac{S - 1100}{220} \times \frac{13}{75} \times P$$

- (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 the application is lodged with the Corporation or, if the worker so requests, at a date after which an entitlement under section 28 (1) first arose,

**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:
- (i) payable for the classification of the registered worker under the award fixing a rate of pay for that work, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
  - (ii) payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
  - (iii) if the registered worker is a person referred to in paragraph (c) (i) of the definition of **building and construction work** in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers under the supervision of the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or

- (iv) if the registered worker is a person referred to in paragraph (c) (ii) of the definition of **building and construction work** in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers for whom the registered worker has responsibility in his or her capacity as a clerk of works, calculated as 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—an amount that is determined by the Corporation as the appropriate amount of ordinary pay at that date in respect of work on 5 working days during hours in which ordinary pay is payable and that is calculated by reference to either of the following rates:
  - (i) the rate of ordinary pay that is, in the opinion of the Corporation, payable under an award for work that is equivalent (or substantially equivalent) to the type of work carried out by the registered worker, or
  - (ii) another rate of ordinary pay that is, in the opinion of the Corporation, appropriate to the type of work carried out by the registered worker.
- (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.

### **30 Long service payment not payable in certain cases**

- (1) The Corporation shall not pay to an applicant referred to in section 28 (1) (c) or (d) a long service payment unless the Corporation is satisfied that the applicant has permanently ceased 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.

### **30A Long service leave**

- (1) While leave from employment is not an entitlement under this Act, nothing in this Act precludes a registered worker and his or her employer from entering into an agreement by which the worker is afforded a period of unpaid leave.
- (2) A period of any such unpaid leave may be calculated by reference to the provisions of

the *Long Service Leave Act 1955* or in such other manner as may be agreed.

- (3) Leave taken in accordance with this section is taken, for the purposes of section 4 (11) (a1) (i) of the *Long Service Leave Act 1955*, to constitute an absence of the worker under the terms of the worker's employment.

### **31 Benefits under other laws**

- (1) A payment to which a person becomes entitled under this Act or the former Act in respect of any period of service in the building and construction industry is to be reduced, in accordance with this section, in consequence of any benefit (including any long service leave taken in advance) due to and taken by the person under an approved long service leave scheme calculated in respect of the same period (in this section referred to as an **alternative benefit**).
- (2) A person is not entitled to a payment based on service credits accrued in a period of service in respect of which the person has taken an alternative benefit, except as provided by this section.
- (3) A person who, as a consequence of the bankruptcy or liquidation of his or her employer, has taken an alternative benefit in respect of a period of service and who makes application in accordance with subsection (4) is entitled to a payment from the Corporation equal to the difference, if any, by which the alternative benefit taken falls short of the payment (calculated in respect of the same period of service) to which the person would have been entitled under this Act if the person had not taken the alternative benefit.
- (4) An application for the purposes of subsection (3) must be made to the Corporation within 3 months after the alternative benefit was taken or within such further time as may be allowed by the regulations.
- (5) Subsection (2) does not affect the value of any service credit for the purposes of calculating a payment to which a person is entitled under this Act for service in the building and construction industry in a period subsequent to a period in respect of which the person has taken an alternative benefit.
- (6) 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 payment was calculated, entitled to any benefits under an approved long service leave scheme.
- (7) In this section, **approved long service leave scheme** means:
  - (a) the provisions of the *Long Service Leave Act 1955* or of a law of a reciprocating State or Territory that, in the opinion of the Corporation, corresponds to that Act,  
or

- (b) a scheme in respect of which an exemption has been granted under section 5 (2) (a) of that Act or under a provision of a law of a reciprocating State or Territory that, in the opinion of the Corporation, corresponds to that paragraph.

### **31A Payment of alternative benefits to be notified**

An employer who intends to pay any alternative benefit referred to in section 31 (1) to or in respect of an employee employed (or who was employed) by the employer in building and construction work must notify the Corporation of that intention before making the payment.

Maximum penalty: 20 penalty units.

### **32 Payments to employers**

(1) Where:

- (a) a person is provided with any alternative benefits referred to in section 31 (1) in respect of any period of service in the building and construction industry, and
- (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 12 months after those benefits were provided or within such longer period (not exceeding 2 years) 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 in respect of a period during which the worker was employed under a contract of employment by the employer, and for which the alternative benefits were provided, increased by 275 where that period commenced on the appointed day within the meaning of the former Act,

**P** represents, at the date the application is lodged with the Corporation:

- (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:

- (i) payable for the classification of the registered worker under the award fixing a rate of pay for that work, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
  - (ii) payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
  - (iii) if the registered worker is a person referred to in paragraph (c) (i) of the definition of **building and construction work** in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers under the supervision of the registered worker, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or
  - (iv) if the registered worker is a person referred to in paragraph (c) (ii) of the definition of **building and construction work** in section 3—payable under an award fixing a rate of pay for work that is equivalent, or substantially equivalent, to the type of work carried out by workers for whom the registered worker has responsibility in his or her capacity as a clerk of works, calculated as 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—an amount that is determined by the Corporation as the appropriate amount of ordinary pay at that date in respect of work on 5 working days during hours in which ordinary pay is payable and that is calculated by reference to either of the following rates:
- (i) the rate of ordinary pay that is, in the opinion of the Corporation, payable under an award for work that is equivalent (or substantially equivalent) to the type of work carried out by the registered worker, or
  - (ii) another rate of ordinary pay that is, in the opinion of the Corporation, appropriate to the type of work carried out by the registered worker.
- (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.
- (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 alternative 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, 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 (2A) or (3), 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.

### **32A Entitlement to long service benefit for service in a reciprocating State or Territory**

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

(a) the person:

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

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

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

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

(3) A person who, in or in support of an application made under subsection (1) or (2), makes a statement that is, to that person's knowledge, false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 50 penalty units.

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

the amount of that benefit calculated in accordance with that law.

- (4A) A payment made by the Corporation in respect of an application under subsection (2) is valid and effectual against any demand in respect of the payment by any other person.
- (4B) If payment is made in respect of an application under subsection (2), before the grant of letters of administration of the estate, to the personal representative of a registered worker who died intestate, the personal representative holds the payment subject to the same trusts as if he or she had obtained such a grant.
- (4C) A payment must not be made in respect of an application under subsection (2) after evidence has been produced to the Corporation of the grant of letters of administration of the estate, or probate of the will, of the deceased registered worker, except to the person who has obtained the letters of administration or probate of the will (as appropriate).
- (5) An application for the payment of an amount under this section may be included in an application for a long service payment under section 28 if the periods of service to which that payment relates are consecutive and not interrupted by an interval exceeding that prescribed for the purposes of this subsection.
- (6) Where the Corporation makes a payment under this section, the Corporation must, as soon as practicable after making that payment, take all appropriate steps to secure the reimbursement of the amount of that payment by the corresponding authority of the reciprocating State or Territory concerned.
- (7) Where under a provision of a corresponding law that corresponds to this section the corresponding authority pays to a person an amount that, but for the payment, would have been payable as a long service payment under this Act:
- (a) the obligation of the Corporation to make that long service payment to that person is discharged, and
  - (b) the Corporation shall, as soon as practicable after being notified of the payment and if satisfied that the payment was properly made, reimburse the corresponding authority accordingly.
- (8) The payment of an amount by the Corporation under subsection (7) shall be made in accordance with such terms and conditions (if any) as are specified in the agreement entered into under section 55 (1) with respect to the State or Territory in which the relevant corresponding authority is established.
- (9) In this section, **personal representative**, in relation to a payment in respect of a deceased registered worker, means:
- (a) in the case of a person who died wholly or partially intestate—any person who

appears to the Corporation to be entitled to obtain a grant of letters of administration of the estate of the person, and

- (b) in the case of a person who died testate—any person who appears to the Corporation to be entitled to receive the relevant payment under the will of the person.

## Part 5 Long service levies

### 33 Definitions

- (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 the *Local Government Act 1993*, 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 the *Local Government Act 1993*.

- (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.

### 34 Buildings in respect of which long service levy payable

- (1) A long service levy is payable in respect of the erection of every building, except as provided by this section.
- (2) A long service levy is not payable:
- (a) (Repealed)
  - (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 the circumstances and to the extent prescribed by the regulations.
- (3) (Repealed)

### 35 Rate of long service levy

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.

### 36 Date long service levy becomes payable

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.

### 37 Person liable to pay long service levy

- (1) A long service levy in respect of the erection of a building is payable by:
  - (a) in a case where development consent, a construction certificate or a complying development certificate is required to be obtained under the *Environmental Planning and Assessment Act 1979* for the erection of the building:
    - (i) if development consent is granted and a construction certificate is not required to be obtained—the person to whom the development consent is granted, or
    - (ii) if a construction certificate is required to be obtained—the person to whom the construction certificate is issued, or
    - (iii) if a complying development certificate is issued—the person to whom the complying development certificate is issued, 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.

### 38 The Crown and contractors to the Crown

- (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.
- (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.

### **39 Offence for failure to pay long service levy**

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.

Maximum penalty: 20 penalty units.

### **40 Determination of cost of erecting building for purposes of this Part**

(1) For the purposes of this Part, the cost of erecting a building is:

- (a) the cost as determined by:
  - (i) the consent authority granting the development consent referred to in section 37 (1) (a) (if a construction certificate is not required to be obtained), or
  - (ii) the certifying authority issuing the construction certificate referred to in section 37 (1) (a) (if a construction certificate is required to be obtained), or
  - (iii) the certifying authority issuing the complying development certificate referred to in section 37 (1) (a) (if a complying development certificate is issued), or
- (b) where no such determination is made—the contract price or, if there is no contract price, the cost as determined by the Corporation.

(2) Notwithstanding subsection (1), if the Corporation is satisfied that the determination of a consent authority or certifying authority 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.

### **41 Supplementary payment of long service levies**

(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.

Maximum penalty: 20 penalty units.

(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.

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

Maximum penalty: 20 penalty units.

(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.

## **42 Refunds of long service levies**

(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 that may not be erected on the land concerned except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or the erection of which is complying development within the meaning of that Act—the building has not been erected and no development consent or complying development certificate enabling the erection of the building remains 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.

(1A) Regulations made for the purposes of section 34 (2) (c) may provide for a refund of the whole or part of a long service levy that had been paid in respect of a building, or by or on behalf of a person, exempted from payment of the levy.

(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.

(4) An application for a refund under this section (other than a refund under subsection (6)) must be made:

- (a) within 12 months after the completion or cessation of building work on the erection of the building, or
- (b) in a case where such building work never commenced:
  - (i) not later than 3 months after the expiry of any development consent or complying development certificate that enables the erection of the building, or
  - (ii) if no such consent or certificate was required or given, within 3 years after payment of the levy,



unless the Corporation considers that special circumstances warrant acceptance of the application after that time.

- (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.
- (6) On application made in accordance with subsection (7), a person who has paid a long service levy:
  - (a) is entitled to a refund of the amount of the levy:
    - (i) if it was paid in error, or
    - (ii) to the extent that regulations referred to in subsection (1A) so provide, or
  - (b) is entitled to a refund of the overpayment if the levy was overpaid in error.
- (7) An application referred to in subsection (6) must be made in an approved form within 3 months after the payment concerned was made, or within such further time as the Corporation may in a particular case allow.

#### **43 Payment of long service levies by instalments**

- (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.
- (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.

#### **44 Authorised agents for collection of long service levies**

- (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.

#### **45 Certificate as to payment of long service levies**

A certificate purporting to be signed by the Chief Executive Officer 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
- (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.

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

- (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.

#### **47 Recovery of long service levies**

- (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.
- (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 Chief Executive Officer 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.

#### **48 Penalties no relief from long service levies**

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**

#### **49 Appeal against refusal or cancellation of registration**

- (1) A person may appeal to the Committee against a decision of the Corporation:
  - (a) to refuse an application for registration as a worker (whether the application was made by the appellant or on the appellant's behalf, and whether or not it sought registration of the appellant or a person employed by the appellant), or
  - (b) to cancel the person's registration (otherwise than as authorised by section 19 (2A)) as a worker.
- (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 (1A)—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.

#### **50 Appeal against refusal of service credits**

- (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.

#### **51 Appeal in relation to long service levy**

- (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.
- (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.

#### **52 Appeal in relation to payment of interest on long service levies etc**

- (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.

### **53 Hearing and determination of appeals by 2 or more members**

- (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.
- (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.

### **54 Appeals—general provisions**

- (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**

### **55 Arrangements with other States and Territories**

- (1) For the purposes of this Act, the Minister may from time to time enter into an agreement, containing reciprocal arrangements with respect to the matters specified in subsection (2), with the Minister charged with administering the law of a State (other than New South Wales), or a Territory, of the Commonwealth which provides for making payments of long service benefits to persons engaged in the building and construction industry in that State or Territory.
- (2) The matters referred to in subsection (1) are:
- (a) the payment of long service benefits to workers engaged in the building and construction industry,
  - (b) the exchange of information concerning credits and entitlements to such payments between the Corporation and any authority established in the other State or the Territory concerned which has functions similar to those of the Corporation, and
  - (c) such other matters relating to the payment of long service benefits to such workers as the Ministers may wish to agree to.
- (3) An agreement entered into under subsection (1) may be varied or revoked by agreement of the Ministers concerned.
- (4) (Repealed)

### **56 Keeping of books and records**

- (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.

Maximum penalty: 20 penalty units.

## 57 Service of notices or other documents

- (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
  - (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.
- (4) The regulations may authorise the service of documents by or on the Corporation by facsimile or other electronic means.

## 58 Power of entry and inspection

- (1) In this section, **premises** includes any structure, building and place (whether built



upon or not), and any part thereof.

(2) A person authorised by the Corporation may:

(a) enter any premises in order:

(i) to determine whether any workers are employed or engaged there, or

(ii) to determine, for the purposes of section 40, the cost of erecting a building, and

(b) require a person to produce, at such time and place as the authorised person may specify, any books, records or other documents:

(i) required to be kept under or for the purposes of this Act or the regulations, or

(ii) relating to the cost of erecting a building, and

(c) make such examination and enquiry as may be expedient for the purposes of any determination mentioned in paragraph (a) or for the purpose of ascertaining whether the provisions of this Act and the regulations are being complied with.

(2A) The power conferred on a person authorised under subsection (2) to compel the production of a document includes the power:

(a) to require its translation into the English language, if it is not written in English, and

(b) to compel the production, in hard-copy, graphic form, of a document that is stored electronically or that otherwise consists of anything referred to in paragraph (b) or (c) of the definition of **document** in section 21 (1) of the [Interpretation Act 1987](#).

(3) Subsections (1) and (2) do 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 this section in the exercise of the person's functions under subsection (2) (a) or (c) or, being the occupier of any premises, refuse to permit or to assist a person so authorised to exercise those functions.

Maximum penalty: 50 penalty units.

(5) A person shall not neglect or fail to comply with a requirement made under this section.

Maximum penalty: 50 penalty units.

(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.

### **58A False statements**

A person who:

- (a) in any application, certificate, claim, objection, appeal, book or record made, furnished or maintained under or for the purposes of this Act or the regulations, or
- (b) in any information furnished:
  - (i) in purported compliance with a requirement made of the person under this Act or the regulations, or
  - (ii) for the purpose of obtaining any exemption, concession, benefit or advantage under this Act or the regulations,

makes any statement or records any matter that the person knows to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units.

### **59 Disclosure of information**

- (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.

Maximum penalty: 50 penalty units.

- (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) (b) only if the Minister is satisfied that to do so would be in the public interest.

### **60 Authentication of certain documents by Corporation**

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 Chief Executive Officer.

### **61 Recovery of charges etc by Corporation**

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

### **62 Protection from liability**

No matter or thing done in good faith for the purpose of executing this Act shall subject the Minister, the Chief Executive Officer, 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.

### **63 Offences by corporations**

- (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.

### **64 Proceedings for offences**

- (1) Proceedings for offences against this Act or the regulations are to be disposed of summarily before a Local Court.
- (2) The provisions of the *Industrial Relations Act 1996* relating to appeals from, and the stating of a case by, a Local Court to the Industrial Relations Commission in Court Session apply to proceedings before a Local Court for offences against this Act or the regulations.
- (3) Notwithstanding anything in any other Act, proceedings for an offence against this Act

or the regulations may be instituted within the period of 6 years after the act or omission alleged to constitute the offence.

## 65 Regulations

- (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 5 penalty units.
- (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.

## 66 Repeals

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

## 67 Savings, transitional and other provisions

Schedule 3 has effect.

# Schedule 1 Provisions relating to members and procedure of Committee

(Section 8 (4))

## 1 Definitions

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.

## 2 Term of office

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.

### **3 Removal from office**

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

### **4 Filling of vacancy**

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.

### **5 Remuneration**

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.

### **6 Effect of other Acts**

- (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.

### **7 Deputies for members**

- (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 Unions NSW, 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 Employers First.
- (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.

#### **7A Disclosure of interests**

- (1) If:

- (a) a member has a direct or indirect interest in a matter being considered or about to be considered at a meeting of the Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

- (2) A disclosure by a member at a meeting of the Committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be available at all reasonable hours for inspection by any person on payment of the fee (if any) determined by the Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Committee otherwise determines:
- (a) be present during any deliberation of the Committee with respect to the matter, or
  - (b) take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Committee under subclause (4), a member who has a direct or indirect interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Committee for the purpose of making

the determination, or

(b) take part in the making by the Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the Committee.

## **8 General procedure of the Committee**

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.

## **9 Quorum**

The quorum for a meeting of the Committee is 6 members.

## **10 Presiding member**

- (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.

## **11 Decision of Committee**

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.

## **12 Minutes**

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.

## **13 Transaction of business outside meetings or by telephone**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## Schedule 2 Repeals

(Section 66)

*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*.

## Schedule 3 Savings, transitional and other provisions

(Section 67)

### Part 1 Provisions consequent on enactment of this Act

#### 1 Definitions

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.



## **2 Continuity of Corporation**

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

## **3 Former Committee**

(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).

## **4 First meeting of Committee**

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

## **5 Applications and matters pending before former Committee etc**

- (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.

## **6 References to former Committee and former Act**

After the commencement of this Act, in any 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.

## **7 Continuation of the Fund**

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.

## **8 Continuation of registration of workers under former Act**

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.

## **9 Continuation of register of workers**

- (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.

## **10 Allocation of service credits after commencement of this Act**

- (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.

**11 (Repealed)**

**12 Continuation of staff**

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.

**13 Long service charges under former Act**

- (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.
- (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).

**14 Payments to registered employers in respect of unregistered workers**

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.

## 15 (Repealed)

## Part 2 Regulations consequent on enactment of amendments

### 16 Regulations

- (1) The regulations may make other provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

*Building and Construction Industry Long Service Payments Amendment Act 1998.*

- (2) A provision referred to in subclause (1) may take effect as from the commencement of the Act concerned 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.
- (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.

## Part 3 Provisions consequent on enactment of **Building and Construction Industry Long Service Payments Amendment Act 1998**

### 17 Definition

In this Part, the **amending Act** means the *Building and Construction Industry Long Service Payments Amendment Act 1998*.

### 18 Calculation of award rates

The definition of **award** inserted in section 3 (1) by the amending Act is to be used for the purposes of calculations made under the Act in respect of all payments made after the new definition takes effect.

### 19 Building and construction work

The repeal and substitution by the amending Act of the definition of **building and construction work** in section 3 (1) does not afford any person a right to be credited, in respect of service on any date before the repeal and substitution of that definition took effect, that the person would not have had if the repeal and substitution had not been

effected.

## **20 Registration as a worker**

- (1) Section 16 (2), as inserted by the amending Act, applies in respect of a worker who, immediately before its commencement, was performing building and construction work in New South Wales under a contract of employment, but so applies as if the reference in that subsection to a period of 7 days after commencing to be so employed were a reference to the period of 90 days after the commencement of section 16, as inserted by the amending Act.
- (2) An amendment made by the amending Act to section 18 does not apply in respect of an application for registration that was lodged but not determined before the date on which the amendment took effect.
- (3) Section 19 (1), as amended by the amending Act, extends to apply to workers who were registered before the commencement of that subsection.
- (4) Section 19 (1A) and (1B) extend to apply to workers who were registered before the commencement of those subsections.
- (5) Section 19 (2A) extends to apply in respect of a payment of the kind referred to in paragraph (a) of that subsection that was made before the commencement of that subsection.
- (6) Except to the extent required by any agreement in force under section 55, the provisions of section 19 (6) and (7) do not apply in respect of a registration that was cancelled before the commencement of those subsections.

## **21 Part-time and other work**

The repeal and substitution by the amending Act of section 22 does not afford any person a right to be credited, in respect of service on any date before the repeal and substitution of that section took effect, that the person would not have had if the repeal and substitution had not been effected.

## **22 Service credits for activities and circumstances other than building and construction work**

- (1) Section 23, as inserted by the amending Act, does not apply in respect of any activity undertaken or circumstance existing before its commencement.
- (2) The provisions of section 23, as in force before its repeal by the amending Act, continue to apply to the extent that they conferred any right with respect to any activity or circumstance referred to in subclause (1).

### **23 Service as an adult**

A person is entitled, in accordance with section 28 (1), as amended by the amending Act, to be credited with service rendered by the person as a minor to the same extent as if paragraph (c) of that subsection, as so amended, had been in force when the service was rendered.

### **24 Entitlement to long service payment on incapacity**

The amendments made by the amending Act to sections 28 (1) (e) and 30 do not apply in respect of an application made under either of those provisions before the amendments took effect.

### **25 Payments to employers**

- (1) This clause applies in respect of the provision of a benefit referred to in section 31 as an alternative benefit (whether the benefit was provided before or after the repeal and replacement of that section by the amending Act).
- (2) On application made within 12 months after the provision of the alternative benefit or within such longer period (not exceeding 2 years) as the Corporation may allow, the Corporation must pay to the employer who provided those benefits an amount calculated in accordance with the formula given in section 32 (1) (as modified by subclause (3)).
- (3) For the purposes of calculating an amount payable under subclause (2), the pronumeral S in the formula referred to in that subclause is taken to represent the number of days in the period during which, as evidenced by certificates of service furnished by the employer concerned under section 20, the worker performed building and construction work in the service of the employer under a contract of employment before the alternative benefit accrued due (increased by 275 where that period commenced on the appointed day within the meaning of the former Act).
- (4) The period referred to in subclause (3) does not include any day that is later than 90 days after the commencement of section 16 (2) unless the worker was registered on that day.
- (5) Subject to subclause (4), the period during which, as referred to in subclause (3), a worker performed building and construction work in the service of an employer is taken to include any day in respect of which the worker was, by virtue of illness or otherwise, entitled to a service credit (or would have been, if the worker had been registered on that day) while employed by that employer.
- (6) A payment made before the commencement of this clause to an employer that was not lawfully made, but that could lawfully have been made if this clause had been in force at the time of the payment, is validated.

## **26 Refunds**

A refund of the whole or part of a levy, given before the amendments made by the amending Act to section 42 took effect, that was not lawfully given but that could lawfully have been given if those amendments had been in force at the time of the refund is validated.

## **27 Appeals**

The amendment made by the amending Act to section 49 does not apply to a right of appeal existing before the amendment took effect.

## **28 Proceedings for offences**

The amendment made by the amending Act to section 64 does not apply so as to allow proceedings to be instituted for an offence allegedly constituted by an act or omission that was more than one year old at the time the amendment took effect.