

First print



New South Wales

Building and Construction Industry Long Service Payments Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Building and Construction Industry Long Service Payments Act 1986* in connection with payments and claims under that Act and other matters.

The Bill amends certain other Acts consequentially.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed, except for Schedule 2, which starts on the date of assent to the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Building and Construction Industry Long Service Payments Act 1986* set out in Schedules 1–3.

Clause 4 is a formal provision giving effect to consequential amendments to the Acts mentioned in Schedule 4.

Schedule 1 Amendments

Calculation of long service payments

Currently long service payments due to building and construction workers under the Act are calculated on the workers' rates of pay under awards. The insertion in the Act of new definitions of *award* and *Commonwealth industrial instrument* (inserted by **Schedule 1 [2]**), and the amendments made by **Schedule 1 [33]** and **[37]**, enable the Building and Construction Industry Long Service Payments Corporation (the *Corporation*) to calculate long service payments based on rates of pay contained in State and Commonwealth industrial agreements, including certified agreements and Australian workplace agreements.

Meaning of "building and construction work"

The current definition of *building and construction work* in the Act is limited to the work done by a person "for the majority of the person's ordinary hours of work". A new definition, inserted by **Schedule 1 [2]**, dispenses with this qualification in the definition.

Membership and procedure of the Building and Construction Industry Long Service Payments Committee

Schedule 1 [3] and **[4]** amend section 8 of the Act so as to provide for the appointment of two new members of the Committee. **Schedule 1 [50]** amends Schedule 1 to the Act so as to require a Committee member to disclose any interest the member may have in a matter that comes before a meeting of the Committee that could give rise to a conflict of interests.

Register of building and construction workers

The Act requires the keeping of a register intended to contain the names of all workers engaged in the building and construction industry (and who are therefore eligible to accrue service credits under the Act). The Bill proposes amendments in connection with the register, as follows:

- At present a person must make his or her own application for registration as a building and construction worker, but a new section 16 (2) (inserted by **Schedule 1 [6]**) imposes a duty on a person's employer to apply for the person's registration if the person is not already registered.
- At present the Corporation may register a person as a building and construction worker with retrospective effect, so as to fix a registration date up to 2 years before the date on which an application for registration is lodged, or earlier if the Corporation sees good reason to do so. Amendments made to section 18 of the Act by **Schedule 1 [8]** allow back-dating up to 5 financial years before the beginning of the financial year in which the application for registration is lodged, but remove the Corporation's discretion to fix an earlier registration date.
- By amendment of section 19 (effected by **Schedule 1 [9]**), the present requirement to cancel the registration of a building and construction worker who has not accumulated service credits in 4 years is varied so that:
 - (a) the 4-year period does not run while the worker is prevented, by a prescribed cause (such as pregnancy), from earning service credits, and
 - (b) in the case of a worker with 5 or more years' service credited, registration is not cancelled but merely suspended after any such break in credit accumulation (so that the worker's name is retained in the records of the Corporation).A cancelled or suspended registration may be restored in accordance with new subsections (6) and (7) of section 19 (inserted by **Schedule 1 [12]**).
- Section 19 is further amended (by **Schedule 1 [10]**) so that the registration of a building and construction worker may be cancelled after payment of a death or retirement benefit or at the worker's request.

Lodgment of service credits by employers

Section 20 of the Act, which requires employers to furnish the Corporation with certified particulars of service by any building and construction worker employed under a contract of employment, specifies the time (1 month after the end of each financial year or 1 month after a worker's employment ceases) within which those particulars must be furnished and provides for extension of that time (by up to 2 months) at the discretion of the Corporation. The amendments made by **Schedule 1 [13]** and **[24]** reduce the 1-month period for furnishing particulars to 7 days after cessation of employment (unless otherwise prescribed by the regulations), but provide that the Corporation, while it is free to reject particulars that are furnished out of time, may at its discretion accept them up to 5 financial years after expiry of the period of employment to which they relate.

Schedule 1 [14] amends the section further to allow the required particulars to be transmitted electronically to the Corporation.

Service credits for activities other than actual building and construction work

Entitlements to long service payments under the Act accrue in the form of service credits. Under sections 22 and 23 of the Act, workers at present obtain credits principally for time spent performing building and construction work. In addition, however, they obtain a partial credit (two-thirds of the time so spent, subject to a ceiling equivalent to 6 months per year of full-time work) for any time during which they are unemployed following retrenchment and are at the same time incapacitated for work owing to an illness. New sections 22 and 23, inserted by **Schedule 1 [22]**, abolish the ceiling and extend it, in the case of both contract of employment workers and subcontractors, to unemployment occurring otherwise than through retrenchment. The new provisions also make service credits available for time spent in other activities or circumstances, namely:

- time spent in undertaking a work-related training course, and
- time spent in performing voluntary work of a building/construction nature following a declared emergency, and
- time spent in performing light duties while incapacitated after a work injury, and
- time spent in unpaid work for the purpose of constructing a residential building intended for sale by the worker.

Payments to employers

Section 32 of the Act provides that employers who make long service payments to building and construction workers in accordance with the *Long Service Leave Act 1955* or another approved long service scheme are entitled to a payment out of the fund established under the Act. Section 24 (3) provides that a worker who has received a long service payment in respect of service for periods of less than 10 years because of retiring from or permanently leaving the industry does not accrue service credits in the 12 months following his or her application. This subsection has operated to prevent inclusion of any service in that 12-month period for the purposes of calculations under section 32. A new section 24 (4) is inserted by **Schedule 1 [24]** to avoid the consequence that such service cannot be counted for the purposes of payments due to employers.

Retiring age

For the purpose of applications for long service payments on retirement, the Act now sets a retirement age of 65 (or a lower age, if the worker becomes entitled to a war service pension). **Schedule 1 [28]** amends section 27 of the Act so as to reduce the normal retirement age from 65 to 55.

Service as an "adult"

One of the present eligibility criteria for a pro rata long service payment under the Act is that the building and construction worker must have completed 5 or more years' service "as an adult". The amendments made to section 28 of the Act by **Schedule 1 [30]–[33]** abolish the "adult" factor in this criterion.

Payment on total incapacity or permanent cessation of building and construction work

Section 28 of the Act provides that a building and construction worker with 5 years' service, or who has reached the retiring age with at least 55 days' service, is entitled to a long service payment if he or she intends permanently to cease work in the industry. The amendments made by **Schedule 1 [30]** have the result that the worker must satisfy the Corporation that the cessation of the worker's employment in the industry is permanent (new section 28 (1) (c) and (d)).

The same section provides that a building and construction worker is entitled to a long service payment if he or she has at least 55 days' service as a building and construction worker and is found to be totally incapacitated for further service as such a worker. **Schedule 1 [30]** also amends the section to make it clear that the incapacity must be adjudged to be permanent as well as total, in order to give rise to the entitlement (new section 28 (1) (e)).

Successive claims for long service payments

Section 28 of the Act provides that a building and construction worker is entitled to a long service payment after 10 years' service and to a further payment 5 years later. The section is amended by **Schedule 1 [30]** to make it clear that an entitlement arises every 5 years following the initial 10-year period (new section 28 (1) (f)).

Long service leave

The Act makes no provision for long service leave as such, but only for long service payments. **Schedule 1 [35]** inserts a new section 30A, the object of which is to indicate that employees have the option, with the agreement of their employers, to take a period of leave commensurate with long service payments received by them.

Benefits under other laws

Section 31 of the Act provides that service in respect of which a benefit has been paid to a building and construction worker under the *Long Service Leave Act 1955* or under other approved long service leave schemes cannot be counted for the purpose of service credits under the Act. The section precludes the recognition, for the purposes of the Act, even of service subsequent to receipt of benefits under the other scheme. **Schedule 1 [35]** repeals and replaces section 31 so that such subsequent service is recognised. The new section also makes provision for a "top-up" payment to a worker who is also eligible for a long service payment under the Act but who, when receiving a payment under another scheme, fails to obtain the full benefit to which he or she is entitled under that other scheme, owing to the insolvency of the worker's employer.

A new section 31A, also inserted by **Schedule 1 [35]**, requires an employer who intends to make a payment under the 1955 Act or under another approved scheme to notify the Corporation of its intention to do so.

Long service levies

Section 42 of the Act provides for refunds of long service levies paid under the Act. **Schedule 1 [39]** amends the section so as to provide that a refund is payable when a levy has been paid by persons, or in respect of buildings, exempt from payment of the levy. **Schedule 1 [40]** amends the section further so as to provide for refunds in cases where the levy is paid or overpaid in error.

Power to inspect premises and compel production of documents

Corporation officers have power under section 58 of the Act to gain access to premises and compel production of documents in order to ascertain whether workers are registered and whether the Act is being complied with. **Schedule 1 [43]–[47]** amend the section to provide that the officers' power can also be exercised in order to ascertain the cost of erecting a building for the purpose of calculating the appropriate levy payable under section 40 of the Act.

Offences

Schedule 1 [48] inserts a new section 58A, which provides that it is an offence for a person to make any false statement or record any false matter in any document or record made or kept under the Act or in furnishing any information for the purposes of the Act. The offence is punishable by a fine of up to 50 penalty units. (The current value of a penalty unit is \$110.)

Schedule 1 [49] amends section 64 of the Act to increase, from 1 year to 6 years, the time within which proceedings may be brought for an offence arising under the Act.

Other amendments

The Bill includes a number of other amendments of a minor character, as follows:

- **Schedule 1 [2]** amends section 3 of the Act to insert a definition of *approved* (meaning approved by the Corporation).
- a new definition of *working day* (meaning a day on which ordinary wages are payable) is also inserted into section 3 of the Act by **Schedule 1 [2]**.
- **Schedule 1 [26]** and **[42]** amend sections 25 and 57 of the Act, to relieve the Corporation of the obligation to serve notices in circumstances where the addressee's whereabouts are unknown and to permit service of notices on or by the Corporation by electronic means.
- **Schedule 1 [52]** and **[53]–[56]** insert provisions of a saving and transitional nature as a consequence of the enactment of the proposed Act, and enable further provisions of a similar nature to be made by regulation.
- Other items of Schedule 1 make amendments that are consequential on the amendments described above.

Schedule 2 Amendments by way of statute law revision

The amendments contained in this Schedule repeal obsolete provisions and replace obsolete references.

**Schedule 3 Amendments consequential on enactment of
Environmental Planning and Assessment
Amendment Act 1997**

The amendments contained in this Schedule are necessary as a consequence of the enactment of the *Environmental Planning and Assessment Amendment Act 1997*, which abolished the requirement to obtain local government building approvals.

Schedule 4 Consequential amendment of other Acts

This Schedule makes consequential amendments to the *Environmental Planning and Assessment Act 1979* and the *Long Service Leave Act 1955*.



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Building and Construction Industry Long Service Payments Amendment Bill 1998

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New South Wales

Building and Construction Industry Long Service Payments Amendment Bill 1998

No , 1998

A Bill for

An Act to amend the *Building and Construction Industry Long Service Payments Act 1986* with respect to payments and claims under that Act; to amend certain other Acts consequentially; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 2 commences on the date of assent to this Act.

3 Amendment of Building and Construction Industry Long Service Payments Act 1986 No 19

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The *Building and Construction Industry Long Service Payments Act 1986* is amended as set out in Schedules 1–3.

4 Consequential amendment of other Acts

Each Act mentioned in Schedule 4 is amended as set out in that Schedule.

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Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *award*, *approved form*, *building and construction work* and *working day* from section 3 (1).

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[2] Section 3 (1)

Insert in alphabetical order:

approved means approved by the Corporation.

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

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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

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(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

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(c) the work of a person who, under a contract of employment:

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(i) directly supervises persons engaged in work of the kind referred to in paragraph (a) or (b), or

(ii) is a clerk of works.

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 5
- (c) an Australian workplace agreement (as defined by section 4 of the *Workplace Relations Act 1996* of the Commonwealth), or 10
- (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. 15

financial year means a year commencing on 1 July.

working day means a day on which ordinary rates of pay are payable. 20

[3] Section 8 Constitution of Committee

Omit "9 members" from section 8 (2). Insert instead "11 members".

[4] Section 8 (2) (d)

Omit "2". Insert instead "4". 25

[5] Section 15 Corporation to keep register of workers

Omit section 15 (1) (a). Insert instead:

- (a) the names of all persons whose registration is approved under section 17,

[6] Sections 16 and 17

Omit the sections. Insert instead:

16 Applications for registration

- (1) A person may at any time apply to the Corporation to be registered as a worker. 5
- (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. 10
Maximum penalty: 20 penalty units.
- (3) An application must be made in the approved form.

17 Registration 15

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.

[7] Section 18 Date of registration

Omit "the application of the person to become a registered worker" from section 18 (1) (a). 20
Insert instead "application for the person's registration".

[8] Section 18 (2)–(4)

Omit section 18 (2). Insert instead:

- (2) The Corporation may at its discretion, of its own motion or at the request (made within 3 months after approval of the application) of a person by or in respect of whom an application for registration is made, fix for the purposes of this section a date that is earlier than the date of lodgment of the application, if it is satisfied that special circumstances warrant its doing so. 25 30

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- (3) A date fixed in accordance with subsection (2) must not be earlier than 5 years before the commencement of the financial year in which the relevant application is lodged.
- (4) On the fixing of a date in accordance with subsection (2):
 - (a) the person is taken for all purposes to have been registered on and from that date, and
 - (b) service credits to which the person is entitled under this Act may be credited to the person in respect of any subsequent dates.

[9] Section 19 Cancellation or suspension of registration

Omit section 19 (1). Insert instead:

- (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). 15
- (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. 20
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- (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. 30

[10] Section 19 (2A)

Insert after section 19 (2):

(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 5

(b) at the request of the worker,

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

[11] Section 19 (3)

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Insert "under subsection (1A) or (2)" after "worker" where firstly
occurring.

[12] Section 19 (6) and (7)

Insert after section 19 (5):

(6) The Corporation may: 15

(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 20

(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. 25

[13] Section 20 Contract of employment workers—certificates of service to be supplied by employers

Omit “1 month” from section 20 (1) (b).

Insert instead “7 days (or such other time as may be prescribed by the regulations)”.

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[14] Section 20 (3) (a)

Omit the paragraph. Insert instead:

- (a) be in an approved written, electronic or other form,

[15] Section 20 (3) (c)

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Omit “state whether the worker was so employed in the performance of building and construction work on a full-time basis, or, if not,”.

[16] Section 20 (3) (e) and (f)

Omit paragraphs (e)–(g). Insert instead:

- (e) contain such other particulars as are required by the Corporation, and
- (f) be completed in accordance with any directions given by the Corporation.

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[17] Section 20 (4)

Omit the subsection. Insert instead:

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- (4) A certificate of service under subsection (1) must be verified in such manner as the Corporation may require.

[18] Section 21 Subcontract workers—claims for service credits

Omit section 21 (4) (a). Insert instead:

- (a) be in an approved written, electronic or other form,

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[19] Section 21 (4) (e) and (f)

Omit paragraphs (e)–(g). Insert instead:

- (e) contain such other particulars as are required by the Corporation, and
- (f) be completed in accordance with any directions given by the Corporation. 5

[20] Section 21 (5)

Omit the subsection. Insert instead:

- (5) A claim for service credits under subsection (1) must be verified in such manner as the Corporation may require. 10

[21] Section 21 (7)

Omit “section 23 (2) (c)”. Insert instead “section 23”.

[22] Sections 22 and 23

Omit the sections. Insert instead:

22 Service credits for building and construction work 15

- (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. 20
- (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. 25
- (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

Schedule 1 Amendments

-
- (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. 5
- (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: 10
- (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. 15
- (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. 20
- 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. 25
- (6) This section has effect subject to section 24.

23 Service credits in other cases

- (1) A registered worker who: 30
- (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 35

-
- (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), 5
- 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. 15
- (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 20
- (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, 25
- 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. 30
- (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 35
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Schedule 1 Amendments

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- 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. 5
- (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. 10 15
- (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. 20 25
- (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. 30 35
- (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.

[23] Section 24 Limitations on and adjustments of service credits

Omit "any year ending 30 June" wherever occurring in section 24 (1) and (2A) (a).

Insert instead "any financial year".

[24] Section 24 (4)–(6)

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Insert after section 24 (3):

- (4) Section 32, however, applies to each day's service referred to in subsection (3) as though it had been credited to the worker.
- (5) The Corporation may decline to credit service or accept any claim of which notice is not given to the Corporation within the time limited by section 20 or 21, as the case may be, and no credit is to be given in respect of:
 - (a) service that is not notified, in the manner required by this Act, until more than 5 years after the end of the financial year that includes the period of service, or 15
 - (b) any matter mentioned in section 23 in respect of which no claim is made, in the manner required by this Act, until more than 5 years after the end of the financial year that includes the period to which the claim relates. 20
- (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

[25] Section 25 Notice to registered workers of service credits

Omit "building and construction work to which the objection relates was performed" from section 25 (4) (a).

Insert instead "date of the work, activity or circumstance to which the objection relates". 30

[26] Section 25 (5) and (6)

Insert after section 25 (4):

- (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. 5
- (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. 10
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[27] Section 26 Falsifying claims for service credits etc

Omit the section.

[28] Section 27 Definition

Omit "65 years" wherever occurring. Insert instead "55 years".

[29] Section 28 Entitlement to long service payments 20

Omit "or more" from section 28 (1) (a).

[30] Section 28 (1) (c)–(g)

Omit paragraphs (c)–(f). Insert instead:

- (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, 25

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- (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, 5
 - (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: 10
 - (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, 15

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 20
 - (ii) would have become so entitled but for the operation of any provision of section 31, 25

whether or not any such payment was made.

[31] Section 28 (3) and (5)

Omit the subsections.

[32] Section 29 Amount of long service payment

Omit "(being credits obtained from service as an adult)" from section 29 (2) (b) (ii). 30

[33] Section 29 (3)

Omit the matter relating to P. Insert instead:

P represents, at the date applicable in S:

- (a) in the case of a registered worker who, in the opinion of the Corporation, performed work under a contract of employment during the whole or a majority of the relevant period before that date—the amount of ordinary pay that is, in the opinion of the Corporation, payable for the classification of the registered worker under the award fixing a rate of pay for that work, calculated as at that date in respect of work on 5 working days during those hours in which ordinary pay is payable, or 5
- (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: 15
 - (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 20
 - (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. 25

[34] Section 30 Long service payment not payable in certain cases

Omit “intends permanently to cease” from section 30 (1).

Insert instead “has permanently ceased”.

[35] Sections 30A, 31 and 31A

Omit section 31. Insert instead:

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. 5
- (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. 10
- (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. 15

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*). 20 25
- (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 30 35

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- 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
- (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. 10
- (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. 15
- (7) In this section, *approved long service leave scheme* means: 20
- (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 25
- (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. 30

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. 35

Maximum penalty: 20 penalty units.

[36] Section 32 Payments to employers

Insert "alternative" before "benefits" wherever occurring in section 32 (1) (a) and (3) (a).

[37] Section 32 (1)

Omit the matter relating to *P*. Insert instead:

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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, 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 10
- (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: 20
 - (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 25
 - (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. 30

[38] Section 34 Buildings in respect of which long service levy payable

Omit section 34 (2) (c). Insert instead:

- (c) in the circumstances and to the extent prescribed by the regulations.

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[39] Section 42 Refunds of long service levies

Insert after section 42 (1):

- (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.

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[40] Section 42 (6) and (7)

Insert after section 42 (5):

- (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.

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[41] Section 49 Appeal against refusal or cancellation of registration

Omit section 49 (1) (a) and (b). Insert instead:

- (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

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- (b) to cancel the person's registration (otherwise than as authorised by section 19 (2A)) as a worker.

[42] Section 57 Service of notices or other documents

Insert after section 57 (3):

- (4) The regulations may authorise the service of documents by or on the Corporation by facsimile or other electronic means. 5

[43] Section 58 Power of entry and inspection

Omit section 58 (2). Insert instead:

- (2) A person authorised by the Corporation may: 10
- (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 15
- (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 20
- (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. 25
- (2A) The power conferred on a person authorised under subsection (2) to compel the production of a document includes the power: 30
- (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*. 5

[44] Section 58 (3)

Omit "Subsection (2) does".
Insert instead "Subsections (1) and (2) do".

[45] Section 58 (4)

Omit "subsection (2)" where firstly occurring. 10
Insert instead "this section".

[46] Section 58 (4)

Omit "subsection (2) (a) or (e)".
Insert instead "subsection (2) (a) or (c)".

[47] Section 58 (5) 15

Omit "subsection (2) (b), (c) or (d)". Insert instead "this section".

[48] Section 58A

Insert after section 58:

58A False statements

A person who: 20

- (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, 5
- 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. 10
- Maximum penalty: 50 penalty units.

[49] Section 64 Proceedings for offences

Omit "1 year" from section 64 (3). Insert instead "6 years".

[50] Schedule 1 Provisions relating to members and procedure of Committee 15

Insert after clause 7:

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 20
 - (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. 25
- (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 30

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- (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, 5
- 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). 10
- (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. 15
- (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 20
 - (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: 25
 - (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. 30
- (6) A contravention of this clause does not invalidate any decision of the Committee.

[51] Schedule 1, clause 9

Omit "5 members". Insert instead "6 members".

[52] Schedule 3 Savings, transitional and other provisions

Insert before clause 1:

Part 1 Provisions consequent on enactment of this Act 5

[53] Schedule 3, Part 2

Insert before clause 16:

Part 2 Regulations consequent on enactment of amendments 10

[54] Schedule 3, clause 16 (1)

Omit "this Act". Insert instead:

any of the following Acts:

*Building and Construction Industry Long Service
Payments Amendment Act 1998* 15

[55] Schedule 3, clause 16

Omit "this Act" from clause 16 (1).

Insert instead "the Act concerned".

[56] Schedule 3, Part 3

Insert after clause 16: 20

**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*. 25

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. 5

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. 10

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. 15
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- (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. 25
- (3) Section 19 (1), as amended by the amending Act, extends to apply to workers who were registered before the commencement of that subsection. 30
- (4) Section 19 (1A) and (1B) extend to apply to workers who were registered before the commencement of those subsections.

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- (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. 5

21 Part-time and other work 10

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. 15

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. 20
- (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). 25

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. 30

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.

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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). 10
- (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)). 15
- (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). 20
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- (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. 30

-
- (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. 5
- (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. 10

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. 15

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. 20

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. 25

Schedule 2 Amendments by way of statute law revision

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

5

Director-General means the Director-General of the
Department of Industrial Relations.

[2] Section 3 (1)

Omit the definition of *Secretary*.

[3] Sections 4 (2), (3) and (5), 6 (3), 8 (2) (a), 45, 47 (5), 60 and 62

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Omit "Secretary" wherever occurring.
Insert instead "Director-General".

[4] Section 7 Delegation

Omit " , Employment, Training and Further Education" wherever
occurring in section 7 (1).

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[5] Section 11 Investment of Fund

Omit the section.

[6] Section 34 Buildings in respect of which long service levy payable

Omit section 34 (2) (a).

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[7] Section 55 Arrangements with other States and Territories

Omit section 55 (4).

[8] Schedule 3 Savings, transitional and other provisions

Omit clause 11.

Schedule 3 Amendments consequential on enactment of Environmental Planning and Assessment Amendment Act 1997

(Section 3) 5

[1] Section 34 Buildings in respect of which long service levy payable

Omit section 34 (1). Insert instead:

- (1) A long service levy is payable in respect of the erection of every building, except as provided by this section. 10

[2] Section 34 (3)

Omit the subsection.

[3] Section 37 Person liable to pay long service levy

Omit section 37 (1) (a). Insert instead:

- (a) if development consent or a complying development certificate is required to be obtained under the *Environmental Planning and Assessment Act 1979* (or in accordance with the provisions of that Act as applied by any other Act or law) for the erection of the building—the person who makes an application for the relevant development consent or complying development certificate, or 15
20

[4] Section 40 Determination of cost of erecting building for purposes of this Part

Omit section 40 (1). Insert instead: 25

- (1) For the purposes of this Part, the cost of erecting a building is:
- (a) the cost as determined by the consent authority or person granting or issuing the relevant development consent or complying development certificate referred to in section 37 (1) (a), or 30

- (b) where no such determination is made—the contract price or, if there is no contract price, the cost as determined by the Corporation.

[5] Section 42 Refunds of long service levies

Omit “the council’s approval for the erection of the building is no longer” from section 42 (1) (a). 5

Insert instead “no development consent or complying development certificate enabling the erection of the building remains”.

[6] Section 42 (4)

Omit the subsection. Insert instead: 10

- (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: 15
 - (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 20
 - (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. 25

Schedule 4 Consequential amendment of other Acts

(Section 4)

4.1 Environmental Planning and Assessment Act 1979 No 203

5

[1] Section 80 Determination

Insert after section 80 (10):

(10A) Payment of long service levy

A development consent that would enable the erection of a building is not to be granted unless the consent authority is satisfied that any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.

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[2] Section 85A Process for obtaining complying development certificate

Insert after section 85A (10):

(10A) Payment of long service levy

A complying development certificate that would enable the erection of a building is not to be issued unless the council or accredited certifier is satisfied that any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.

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4.2 Long Service Leave Act 1955 No 38

Section 4A

Insert after section 4:

4A Payments to building and construction workers to be notified

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An employer who intends to make any payment by way of a benefit under this Act to or in respect of an employee employed (or who was employed) in building and construction work (within the meaning of the *Building and Construction Industry Long Service Payments Act 1986*) must notify the Building and Construction Industry Long Service Payments Corporation of its intention before making the payment.

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