

## **BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS (AMENDMENT) BILL, 1980**

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### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are—

- (a) to make it clear that persons who build swimming pools or fences or structures, fixtures or works for use in conjunction with buildings or certain other works are entitled to long service payments under the Building and Construction Industry Long Service Payments Act, 1974 (“the Principal Act”) (Schedule 1 (1) (a));
- (b) to provide that plant operators who perform work for which a rate of pay is fixed by an award prescribed by the regulations are entitled to long service payments under the Principal Act and to grant plant operators who were employed in the building and construction industry in January, 1979, or who would have been so employed but for circumstances similar to those specified below in paragraph (w) (i)–(iii) credit for the number of working days in the period between 1st January, 1979, and the date from which plant operators may be registered under the Principal Act (Schedule 1 (1) (b) (i) and (3) (k));
- (c) to provide that workers who perform work in an industry other than the building and construction industry and who, in the opinion of the Building and Construction Industry Committee (“the Committee”), are usually employed in the building and construction industry are entitled to long service payments under the Principal Act in respect of the period they are so employed (Schedule 1 (1) (b) (ii), (4) (a) and (4) (b));
- (d) to enable the Builders Licensing Board (“the Board”) to give effect to reciprocal arrangements between New South Wales and other States and Territories on the portability of long service entitlements in the building and construction industry (Schedule 1 (1) (e));
- (e) to provide that a worker who performs building and construction work under a contract other than a contract of employment is entitled to receive, for the purpose of calculating long service payments, the same credits as a worker employed under a contract of employment in respect of any day on which he is absent from his work on account of illness or injury (Schedule 1 (3) (c), (3) (e), (3) (i) and (6) (c));

- (f) to provide that an unemployed worker whose contract of employment was terminated is entitled to receive, for the purpose of calculating long service payments, credits in certain circumstances for any day on which he would have been absent from his work on account of illness or injury had he continued to be employed as a worker (Schedule 1 (3) (c), (3) (i) and (6) (c));
- (g) to ensure, by the provision of special credits, that workers who are only required to work for 9 days per fortnight instead of the standard 10 days per fortnight that workers are required to work in the building and construction industry become entitled to long service payments at the same time as those other workers (Schedule 1 (3) (c), (3) (i) and (8) (c));
- (h) to authorise the Committee when it makes a determination that work is or is not building and construction work for the purposes of the Principal Act to specify that its determination applies to that work whether performed by the applicant for the determination or by any other person (Schedule 1 (4) (c));
- (i) to provide that determinations made by the Committee under the Principal Act shall be published in the Government Gazette or the Industrial Gazette and that judicial notice be taken of determinations so published (Schedule 1 (4) (d));
- (j) to provide that employers approved by the Board may, instead of making returns and paying long service charges every month—
  - (i) make the returns and pay the long service charges at such longer intervals as the Board may approve; and
  - (ii) make provisional returns and pay provisional long service charges during those longer intervals(Schedule 1 (5) (a)–(f), (h));
- (k) to authorise the Board, in special circumstances, to extend the due date for payment of long service charges or to permit long service charges to be paid by instalments (Schedule 1 (5) (g));
- (l) to provide that all registered workers instead of foundation workers only are entitled to receive a long service payment if they have at least 55 days' service credited in the register, have attained the retirement age and intend permanently to cease work in the building and construction industry (Schedule 1 (7) (a));
- (m) to provide that, where a worker becomes totally incapacitated for service in the building and construction industry or dies, credits accumulated by him for any day's service as an apprentice shall be taken into account for the purpose of determining his entitlement to a long service payment (Schedule 1 (7) (b)–(g));
- (n) to authorise the Board to extend the period within which employers who provide certain benefits to their employees under the Long Service Leave Act, 1955, may apply to the Board for payments in respect of the provision of those benefits (Schedule 1 (9));

- (o) to authorise the Minister to fix the fees and allowances payable to members of the Committee without the approval of the Treasurer (Schedule 1 (10));
- (p) to provide that it is not necessary to post notices or other documents under the Principal Act by certified mail (Schedule 1 (11));
- (q) to require official managers of companies and receivers and managers of the property of companies which in each case employed workers in the building and construction industry to give the Board notice of their appointment and copies of certain statements of the affairs of the companies lodged with the Corporate Affairs Commission (Schedule 1 (12));
- (r) to require the liquidator of a company to give notice of his appointment to the Board where the company employed workers in the building and construction industry within the period of 3 years before his appointment, instead of only where the company employs any such workers at the time of his appointment as liquidator (Schedule 1 (13) (a));
- (s) to require the liquidator of a company referred to in paragraph (r) to lodge a statement of the affairs of the company with the Board and to permit the liquidator to part with the assets of the company without setting aside the amount of long service charges payable by the company if the Board authorises the liquidator to do so after perusal of the company's statement of affairs (Schedule 1 (13) (b) (c));
- (t) to make it clear that a person who fails to comply with a requirement made under the Principal Act for the production of certain documents is guilty of an offence (Schedule 1 (14));
- (u) to provide that certain certificates relating to whether an employer has lodged returns or paid long service charges under the Principal Act are admissible in evidence in any proceedings (Schedule 1 (15));
- (v) to provide that the payment to which employers became entitled as a consequence of the enactment of section 19D of the Principal Act in 1976 in respect of benefits provided to workers under the Long Service Leave Act, 1955, is payable to employers who provided or provide those benefits in respect of any period before the commencement of that section to workers not entitled to long service payments under the Principal Act (Schedule 2, clause 2);
- (w) to provide that certain workers who were not entitled to have their names entered in the register as foundation workers because they were not employed in the building and construction industry at the commencement of the Principal Act are entitled to have their names so entered in the register if they were employed in that industry before that commencement, but at that commencement—
  - (i) they were unable to find work in that industry;
  - (ii) they were temporarily employed outside the State in that industry;
 or

(iii) they were unable to perform building and construction work due to illness or injury

(Schedule 2, clause 3); and

(x) to make other amendments of the Principal Act of a minor, ancillary or consequential nature.

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**BUILDING AND CONSTRUCTION INDUSTRY LONG  
SERVICE PAYMENTS (AMENDMENT) BILL, 1980**

No.           , 1980.

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**A BILL FOR**

An Act to amend the Building and Construction Industry Long Service Payments Act, 1974, to make further provision for long service payments to workers engaged in the building and construction industry; and to enact special provisions with respect to foundation workers and certain employers.

[MR SHEAHAN—17 *September*, 1980.]

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

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of "building and construction industry"—

5 (i) After paragraph (a), insert :—

(a1) swimming pools;

(a2) fences;

(ii) In paragraph (i), after "for use in", insert "or in conjunction with".

10 (b) Section 4 (1), definition of "building and construction work"—

(i) In paragraph (a), after "construction labourer", insert "or plant operator".

15 (ii) Omit "but does not include work which, under section 13", insert instead "and includes work in any other industry performed in New South Wales, being work which is referred to in paragraph (a) or (b) and which, under section 13, has been determined to be building and construction work, but does not include  
20 work which, under that section".

(c) Section 4 (1), definition of "industrial agreement"—

After the definition of "Fund", insert :—

25 "industrial agreement" means an industrial agreement within the meaning of the Industrial Arbitration Act, 1940, or the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as amended by any Act of that Parliament, whether passed before or  
30 after the commencement of this Act;

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 4 (1), definition of “third appointed day”—

5 After the definition of “second appointed day”, insert :—

“third appointed day” means the day appointed and notified under section 2 (2) of the Building and Construction Industry Long Service Payments (Amendment) Act, 1980;

10 (e) Section 4 (5), (6)—

After section 4 (4), insert :—

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

15 (a) that work would, if it were performed in New South Wales, be building and construction work; and

20 (b) the employer of that person has elected, by notice in writing to the Board, to pay long service charges to the Board in respect of that work and has not, by such a notice, revoked that election.

25 (6) For the purpose of this Act, building and construction work performed by a worker in New South Wales shall be deemed not to be building and construction work if—

(a) the employer of that worker applies to the Board for exemption from paying long service charges in respect of that work;

30 (b) that employer satisfies the Board that he contributes to a like scheme relating to the payment of long service charges in a Territory of the Commonwealth or in a State



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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 other than New South Wales and that he  
pays or is required to pay long service  
charges in that Territory or other State in  
respect of that work; and

(c) the Board has, by notice in writing to that  
employer, granted the exemption and has  
not, by such a notice, revoked the exemp-  
10 tion.

(2) Section 10 (1) (b1)—

After section 10 (1) (b), insert :—

15 (b1) where the provisions of clause 3 of Schedule 2 to  
the Building and Construction Industry Long  
Service Payments (Amendment) Act, 1980, so  
require, a statement that the name of a registered  
worker is entered in the register as the name of a  
foundation worker;

(3) (a) Section 11 (1) (a)—

20 Omit “and” where lastly occurring.

(b) Section 11 (1) (b) (iii)—

Omit “work,”, insert instead “work;”.

(c) Section 11 (1) (b1), (b2), (b3)—

After section 11 (1) (b), insert :—

25 (b1) for each working day (being a day on or  
after the date, as shown in the register, on  
which he became a registered worker and on  
or after the third appointed day) on which  
he is absent from his work as a worker under

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 a contract (other than a contract of employment) on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work;

10 (b2) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker and on or after the third appointed day) on which he does not perform paid work of any kind, if—

15 (i) he was employed as a worker under a contract of employment and that contract was terminated by his employer;

20 (ii) since the termination of that contract, he has not performed paid work of any kind;

(iii) the period that, as at that day, has elapsed since the termination of that contract does not exceed 4 years; and

25 (iv) had he been employed as a worker on that day, he would have been absent from his work on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work; and

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(b3) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker) on which he is

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 absent from, and is not required to be present  
at, his work under a contract of employment  
by reason that the award or any industrial  
agreement relating to his work provides that  
ordinary working hours may be worked on 9  
days per fortnight,

(d) Section 11 (1) (e1)—

10 After section 11 (1) (e), insert:—

(e1) in respect of the period commencing on the  
third appointed day and ending on the next  
following thirtieth day of June, be so credited  
pursuant to paragraph (b1) or (b2) with any  
15 day's service in the building and construction  
industry unless that day is the fifth or a sub-  
sequent day on which he is or would have  
been absent, as referred to in paragraph (b1)  
or (b2), as the case may be, from his work in  
20 the building and construction industry during  
that period;

(e) Section 11 (1) (f)—

After "paragraph (b) (iii)" where firstly occurring,  
insert ", (b1) or (b2)".

25 (f) Section 11 (1) (f)—

Omit "he is absent, as referred to in paragraph (b)  
(iii)", insert instead "he is or would have been  
absent, as referred to in paragraph (b) (iii), (b1)  
or (b2), as the case may be".

30 (g) Section 11 (1) (g)—

Omit "or".

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(h) Section 11 (1) (h)—

Omit “industry.”, insert instead “industry;”.

5 (i) Section 11 (1) (i), (j), (k)—

After section 11 (1) (h), insert :—

10 (i) in respect of the period commencing on the  
third appointed day and ending on the next  
following thirtieth day of June, be so credited  
pursuant to paragraph (b1) or (b2) with  
more days’ service in the building and con-  
struction industry than equals the number  
that bears to one hundred and ten (disregard-  
15 ing any fraction) the same proportion as the  
period, in whole months, commencing on the  
third appointed day and ending on the follow-  
ing thirtieth day of June bears to twelve;

20 (j) in respect of any year ending on any thirtieth  
day of June subsequent to the thirtieth day of  
June referred to in paragraph (i), be so  
credited pursuant to paragraph (b1) or (b2)  
with more than one hundred and ten days’  
service in the building and construction  
industry; or

25 (k) in respect of the period commencing on the  
appointed day and ending on the third  
appointed day, be so credited pursuant to  
paragraph (b3) with any day’s service in the  
building and construction industry unless—

30 (i) that day does not precede any day in  
respect of which a long service pay-  
ment or a payment under section 19D  
has been made; and

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (ii) he applies to the Board to be so credited within 1 month after the third appointed day or within such longer period as the Board may in any particular case allow.

(j) Section 11 (2)—

Omit “acordance”, insert instead “accordance”.

10 (k) Section 11 (3), (4)—

After section 11 (2), insert :—

15 (3) For the purposes of section 10 (1) (e), a plant operator whose name is entered in the register pursuant to an application made within 1 month after the third appointed day or within such longer period as the Board may in any particular case allow shall, in addition to being credited with service in the building and construction industry in accordance with subsection (1), be credited on the day on which his name is so entered in the register with the prescribed number of days’ service in the building and construction industry if—

20 (a) on any working day during the month of January in 1979 he performed the work of a plant operator or was absent from his work as a plant operator under a contract of employment—

25 (i) on any paid leave granted by his employer;

30 (ii) on account of incapacity arising out of injury within the meaning of the Workers’ Compensation Act, 1926, being injury arising out of or in the

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- course of his employment in the work of a plant operator; or
- 5 (iii) on account of illness or other injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform the work of a plant operator; or
- 10
- (b) on any working day before the month of January in 1979 he performed the work of a plant operator but does not meet the requirement referred to in paragraph (a) because, during that month—
- 15
- (i) he was unable to find work in the building and construction industry, whether or not he was temporarily employed in any other industry;
- 20
- (ii) he was temporarily employed outside the State in the building and construction industry; or
- (iii) he was unable to perform the work of a plant operator on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform the work of a plant operator.
- 25
- 30
- (4) For the purposes of subsection (3), the prescribed number is the number obtained (disregarding any fraction) by multiplying by  $18\frac{1}{3}$  the number of whole months in the period commencing on 1st January, 1979, and ending on the third appointed day.
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*Building and Construction Industry Long Service Payments (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) (a) Section 13 (1) (a2)—

After section 13 (1) (a1), insert :—

5 (a2) that any work specified in the determination  
is building and construction work if it is  
work—

(i) in an industry other than the build-  
ing and construction industry;

10 (ii) referred to in paragraph (a) or (b)  
of the definition of “building and  
construction work” in section 4 (1);  
and

15 (iii) performed by any person under a  
contract of employment, being a  
person who, in the opinion of the  
committee, is usually employed in  
the building and construction  
industry;

20 (b) Section 13 (1) (b) (i)—

After “building and construction industry”, insert “or  
any other industry”.

(c) Section 13 (3B)—

After section 13 (3A), insert :—

25 (3B) A determination made under this section by  
the Committee may relate to a specified class of work  
performed by or for any person, notwithstanding that  
the determination was made pursuant to an applica-  
30 tion in relation to work performed by or for a  
particular person.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 13 (4)—

Omit the subsection, insert instead :—

5 (4) A determination made under this section by  
the Committee—

10 (a) where it is made on or after the third  
appointed day, shall be published in the  
Gazette or the New South Wales Industrial  
Gazette or, where it is made before that  
day, may be so published;

15 (b) has effect on and from such date (being a  
date before or after the date on which or  
being the date on which the determination  
is made) as may be specified in the deter-  
mination; and

(c) is final and conclusive.

(e) Section 13 (7)—

After section 13 (6), insert :—

20 (7) All courts and persons acting judicially—

25 (a) shall take judicial notice of a determination  
made or purporting to have been made  
under this section by the Committee and  
published in the Gazette or the New South  
Wales Industrial Gazette; and

(b) shall, until the contrary is proved, presume  
that all conditions and steps precedent to  
the making of the determination have been  
complied with and performed.



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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) (a) Section 14 (1)—

Omit the subsection, insert instead :—

5 (1) In this section—

“month” means any month of January, February, March, April, May, June, July, August, September, October, November or December;

10 “prescribed period”, in relation to an employer, means—

(a) except as provided in paragraph (b)—a month; or

15 (b) such period (comprising a number of months) as the Board may, by an order served on that employer and for the time being in force, determine as the prescribed period in relation to that employer.

20 (b) Section 14 (3)—

Omit “An employer”, insert instead “Subject to subsection (4B), an employer”.

(c) Section 14 (3), (4) (b) (i), (4) (b) (ii)—

25 Omit “month” wherever occurring, insert instead “prescribed period”.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 14 (4A), (4B)—

After section 14 (4), insert :—

5           (4A) An employer who is required to lodge a return and pay long service charges under subsection (3) in respect of a prescribed period other than a month shall—

10                 (a) lodge such provisional returns (if any) with the Board; and

               (b) pay to the Board, as long service charges, such amounts (if any),

as the Board may direct by an order served on that employer and for the time being in force.

15                 Penalty : \$1,000.

20                 (4B) The long service charges which, but for this subsection, would be payable by an employer under subsection (3) in respect of a prescribed period shall be reduced by the amounts paid by the employer to the Board as long service charges under subsection (4A) (b) during that period, and if those amounts exceed the long service charges so payable, the amount of that excess shall be refunded by the Board or, if the Board so determines, further payments of long service charges by the employer shall be reduced by the amount of that excess.

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(e) Section 14 (7A), (8)—

After “subsection (3)” wherever occurring, insert “, (4A)”.

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (f) Section 14 (8A)—

5 Omit “month” wherever occurring, insert instead  
“prescribed period”.

## (g) Section 14 (8C)—

After section 14 (8B), insert :—

10 (8C) The Board may, where it considers that  
special circumstances warrant its doing so in any  
particular case, direct—

(a) that the due date for payment of any long  
service charges be extended by such further  
period as may be specified in the direction;  
or

15 (b) that any such charges may be paid in such  
instalments and at such times as may be  
specified in the direction,

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

## (h) Section 14 (9) (a)—

Omit “month”, insert instead “prescribed period”.

## (i) Section 14 (10)—

Omit “mainenance”, insert instead “maintenance”.

## 25 (6) (a) Section 15 (2) (a)—

Omit “and”.

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 15 (2) (b) (ii)—

Omit “that day.”, insert instead “that day;”.

5 (c) Section 15 (2) (c), (d)—

After section 15 (2) (b), insert :—

10 (c) where on any day of those fifty-five days that  
worker was absent from his work as a worker  
under a contract (other than a contract of  
employment) on account of illness or injury,  
being illness or injury certified in writing by  
a medical practitioner to be a reasonable  
ground for his inability to perform building  
and construction work—the average daily pay  
15 of that worker for that day; and

20 (d) where on any day of those fifty-five days that  
worker did not perform paid work of any kind  
but, had he been employed as a worker, he  
would have been absent from his work on  
account of illness or injury, being illness or  
injury certified in writing by a medical prac-  
titioner to be a reasonable ground for his  
inability to perform building and construction  
work—the average daily pay of that worker  
25 for that day.

(7) (a) Section 17 (2) (d)—

Omit “is a foundation worker.”.

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


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**SCHEDULE 1—continued.**
**AMENDMENTS TO THE PRINCIPAL ACT—continued.**
**(b) Section 17 (2) (f), (3) (c)—**

5 Omit “otherwise than as an apprentice” wherever occurring.

**(c) Section 17 (3) (b)—**

After “worker;”, insert “or”.

**(d) Section 17 (3) (c)—**

Omit “(b); or”, insert instead “(b)”.

**10 (e) Section 17 (3) (d)—**

Omit the paragraph.

**(f) Section 17 (4)—**

Omit “subsections (2) (d) and (3) (d)”, insert instead “subsection (2) (d)”.

**15 (g) Section 17 (6) (c)—**

Omit “, under subsection (2) (f) in respect of a foundation worker or under subsection (3) (d)”, insert instead “or subsection (2) (f)”.

**(8) (a) Section 19B (a)—**

20 Omit “and” where lastly occurring.

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 19B (b) (iii)—

Omit “work,” insert instead “work; and”.

5 (c) Section 19B (b1)—

After section 19B (b), insert :—

10 (b1) for each working day (being a day on or after  
the date, as shown in that register, on which  
that employer became a registered employer  
in respect of that worker) on which that worker  
is absent from, and is not required to be  
present at, his work as a worker under a con-  
tract of employment with that employer by  
reason that the award or any industrial agree-  
ment relating to his work provides that  
15 ordinary working hours may be worked on 9  
days per fortnight,

(9) Section 19D (1)—

Omit “were provided—

- 20 (c) where that person is an employee referred to in  
paragraph (b) (i)—by the employer who is the  
registered employer in respect of that person;
- (d) where that person is a registered worker—by his  
employer; or
- 25 (e) where that person is a personal representative  
referred to in paragraph (b) (iii)—by the  
employer who provided those benefits,

*Building and Construction Industry Long Service Payments (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 pay to that employer an amount calculated in accordance with the following formula :—”, insert instead “were provided or within such longer period as the Board may in any particular case allow, pay—
- (c) where that person is an employee referred to in paragraph (b) (i)—to the employer who is the registered employer in respect of that person;
- 10 (d) where that person is a registered worker—to his employer; or
- (e) where that person is a personal representative referred to in paragraph (b) (iii)—to the employer who provided those benefits,
- 15 an amount calculated in accordance with the following formula :—”.
- (10) Section 20 (8)—  
Omit “with the approval of the Treasurer”.
- (11) Section 26 (b) (ii), (c) (ii)—  
20 Omit “by certified mail” wherever occurring.
- (12) Section 30A—  
After section 30, insert :—
- 25 30A. (1) Any person who is appointed after the third appointed day as an official manager, or as a receiver or manager of the property, of a company which was, at any time within the period of 3 years before his appointment, an employer of workers shall—
- 30 (a) within 14 days after his appointment, serve on the Board notice in writing of his appointment;  
and

Receivers,  
managers,  
etc., to  
give notice.

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (b) within 14 days after he has lodged a statement of the affairs of the company with the Corporate Affairs Commission, lodge with the Board, a copy of that statement.

Penalty : \$1,000.

- 10 (2) A reference in subsection (1) (b) to a statement of the affairs of a company is a reference—

(a) in relation to an official manager of the company —to a copy of the documents referred to in section 203A (7) of the Companies Act, 1961; or

15 (b) in relation to a receiver or manager of the property of the company—to a copy of the documents referred to in section 193 (1) (c) (i) of the Companies Act, 1961.

- 20 (3) Subsection (1) (a) does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager.

- (13) (a) Section 31 (1)—

25 Omit “which is an employer of workers”, insert instead “which was, at any time within the period of 3 years before his appointment as liquidator, an employer of workers”.

- (b) Section 31 (1A), (2), (2A), (3)—

Omit section 31 (2) and (3), insert instead :—

30 (1A) The liquidator shall lodge with the Board a statement of the affairs of the company in a form approved by the Board.



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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Board shall, as soon as practicable after the statement is lodged with the Board—

- 5           (a) notify the liquidator that the provisions of subsection (3) apply to him and specify in that notification the amount which appears to the Board to be sufficient to provide for any long service charges which then are or  
10           which will thereafter become payable by the company; or
- (b) notify the liquidator that the provisions of subsection (3) do not apply to him.

15           (2A) The liquidator shall not, without the leave of the Board, part with any of the assets of the company until he has been so notified.

(3) Where the liquidator is notified in the terms referred to in subsection (2) (a), the liquidator—

- 20           (a) shall, subject to section 25 of the Pay-roll Tax Act, 1971, set aside out of the assets available for the payment of the long service charges, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value;  
25           and
- (b) shall, to the extent of the value of the assets which he is required to set aside, be liable as trustee to pay the long service charges.

(c) Section 31 (9)—

30           After section 31 (8), insert :—

(9) In relation to a liquidator who had served notice of his appointment on the Board before the third appointed day but who had not been notified by

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 the Board pursuant to subsection (2), as in force before that day, this section shall be read and construed as if the amendments made to this section by the Building and Construction Industry Long Service Payments (Amendment) Act, 1980, had not been made.

(14) (a) Section 37 (2)—

10 Omit “that subsection”, insert instead “subsection (1) (a) or (c)”.

(b) Section 37 (2A)—

After section 37 (2), insert :—

15 (2A) A person shall not neglect or fail to comply with a requirement made under subsection (1) (b) or (b1).

Penalty : \$1,000.

(15) Section 38A—

After section 38, insert :—

20 38A. A certificate purporting to be under the hand of a prescribed officer certifying— Certificate evidence.

25 (a) that a person has or has not, on a date specified in the certificate, lodged with the Board a return under a provision of this Act so specified for a period so specified; or

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) that a person has or has not, on a date specified in the certificate, paid to the Board the long service charges payable in respect of a worker so specified for a period so specified,

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

SCHEDULE 2.

Sec. 6.

10

SPECIAL PROVISIONS.

1. Expressions used in this Schedule shall, except in so far as the context or subject-matter otherwise indicates or requires, have the same meanings respectively as in the Principal Act. Interpretation.

15 2. (1) In this clause, "relevant period" means the period commencing on the appointed day and ending immediately before the second appointed day. Payments to employers in respect of benefits provided under the Long Service Leave Act, 1955, to unregistered workers.

(2) Where—

20 (a) after the appointed day but before the third appointed day an employer provided to any person any benefits referred to in section 19 (1) of the Principal Act, as in force during the relevant period, in respect of any period of service in the building and construction industry, being a period of service before the second appointed day; and

(b) that person—

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

(ii) was the personal representative of an employee who, at the date of his death, was such a worker,

30 the Board shall, upon application therefor made in writing within 3 months after the third appointed day or within such longer period as the Board may in any particular case allow, pay to that employer such amount as

*Building and Construction Industry Long Service Payments (Amendment).*SCHEDULE 2—*continued.*SPECIAL PROVISIONS—*continued.*

would have been payable to him had the amendments set out in Schedule 4 (6) to the Building and Construction Industry Long Service Payments 5 (Amendment) Act, 1976, been in force when those benefits were provided as if—

- (c) that employer had been a registered employer during the relevant period and the application had been made by him as a registered employer;
- 10 (d) that employer had been credited in the employers' register in respect of that person with the number of working days required by section 19A (1) (c) of the Principal Act; and
- 15 (e) the amendments set out in Schedule 4 (1) to the Building and Construction Industry Long Service Payments (Amendment) Act, 1976, had been in force for the purpose of calculating that amount.
- (3) Where—
- (a) an employer employed a person at any time during the relevant period under a contract of employment;
- 20 (b) that person was an employee who, during that time, was a worker (other than a registered worker);
- (c) that employer is not entitled to make an application for a payment under subclause (2) in respect of that employee; and
- 25 (d) that employer is, on the third appointed day, a registered employer in respect of that employee,

the Board may, notwithstanding anything to the contrary in section 19A of the Principal Act, fix a date during the relevant period as the date on which that employer became a registered employer in respect of that employee.

## 30 3. (1) Where—

- (a) a registered worker (other than a foundation worker) applies to have his name entered in the register as the name of a foundation worker in accordance with subclause (3);
- 35 (b) that registered worker became a registered worker, or applied to become a registered worker, on or before 30th June, 1975; and

Certain workers entitled to be registered as foundation workers.

*Building and Construction Industry Long Service Payments (Amendment).*SCHEDULE 2—*continued.*SPECIAL PROVISIONS—*continued.*

- 5 (c) that registered worker was a worker before 1st February, 1975, but was not entitled to have his name entered in the register as the name of a foundation worker pursuant to section 10 (1) (b) of the Principal Act because, during that month—
- (i) he was unable to find work in the building and construction industry, whether or not he was temporarily employed in any other industry;
- 10 (ii) he was temporarily employed outside the State in the building and construction industry; or
- 15 (iii) he was unable to perform building and construction work on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work,
- the Board shall cause to be entered in the register a statement that the name of that registered worker is entered in the register as the name of a foundation worker.
- 20 (2) Subclause (1) (c) (iii) does not apply in the case of a registered worker who did not again become a worker before 1st February, 1976.
- (3) A person may, within the period of 3 months after the third appointed day or within such longer period as the Board may in any particular case allow, apply, in a form approved by the Board, to the
- 25 Board to have his name entered in the register as the name of a foundation worker pursuant to subclause (1).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980

(70c)

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY

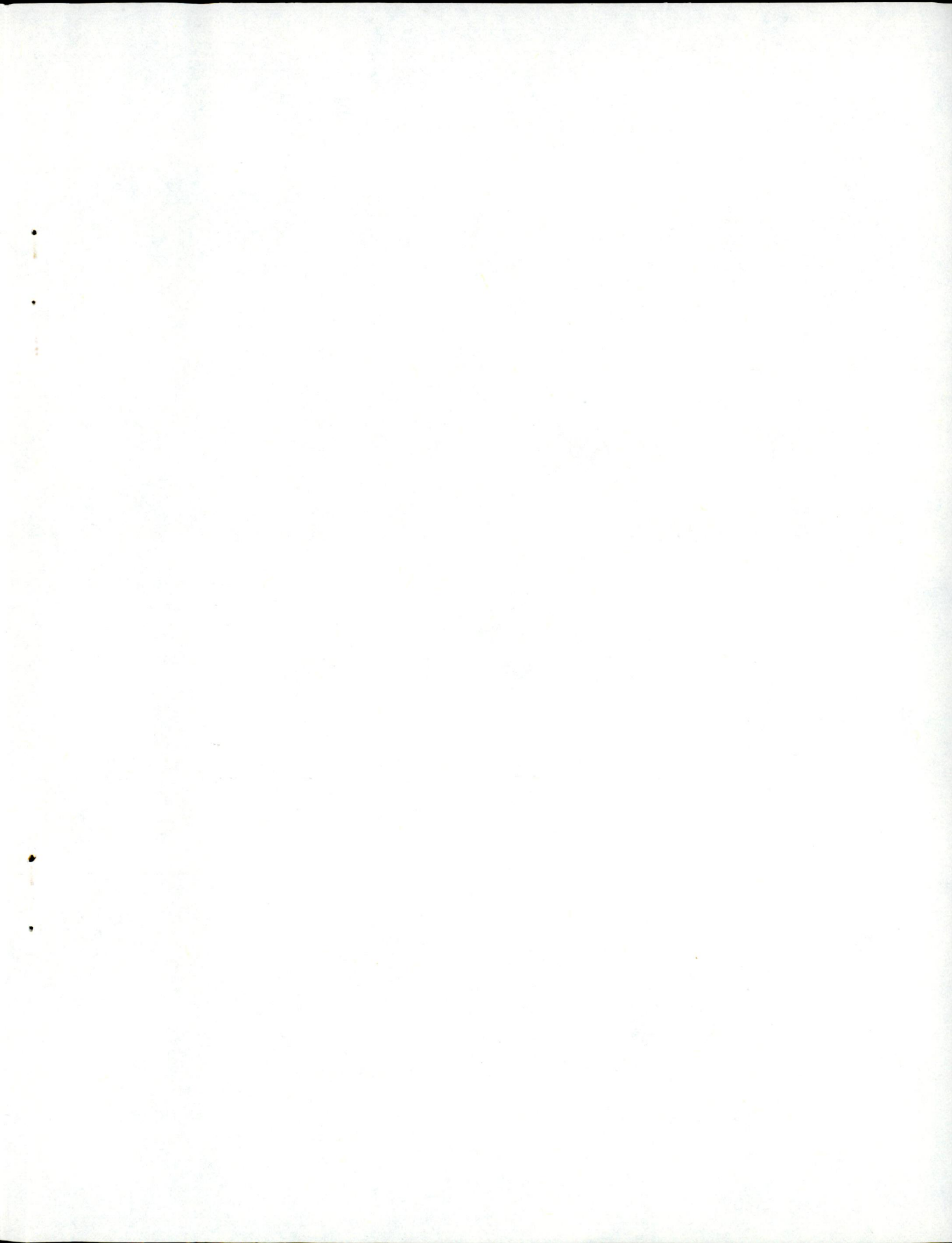
REPORT OF THE  
COMMISSIONERS OF THE BOARD OF CHEMISTRY

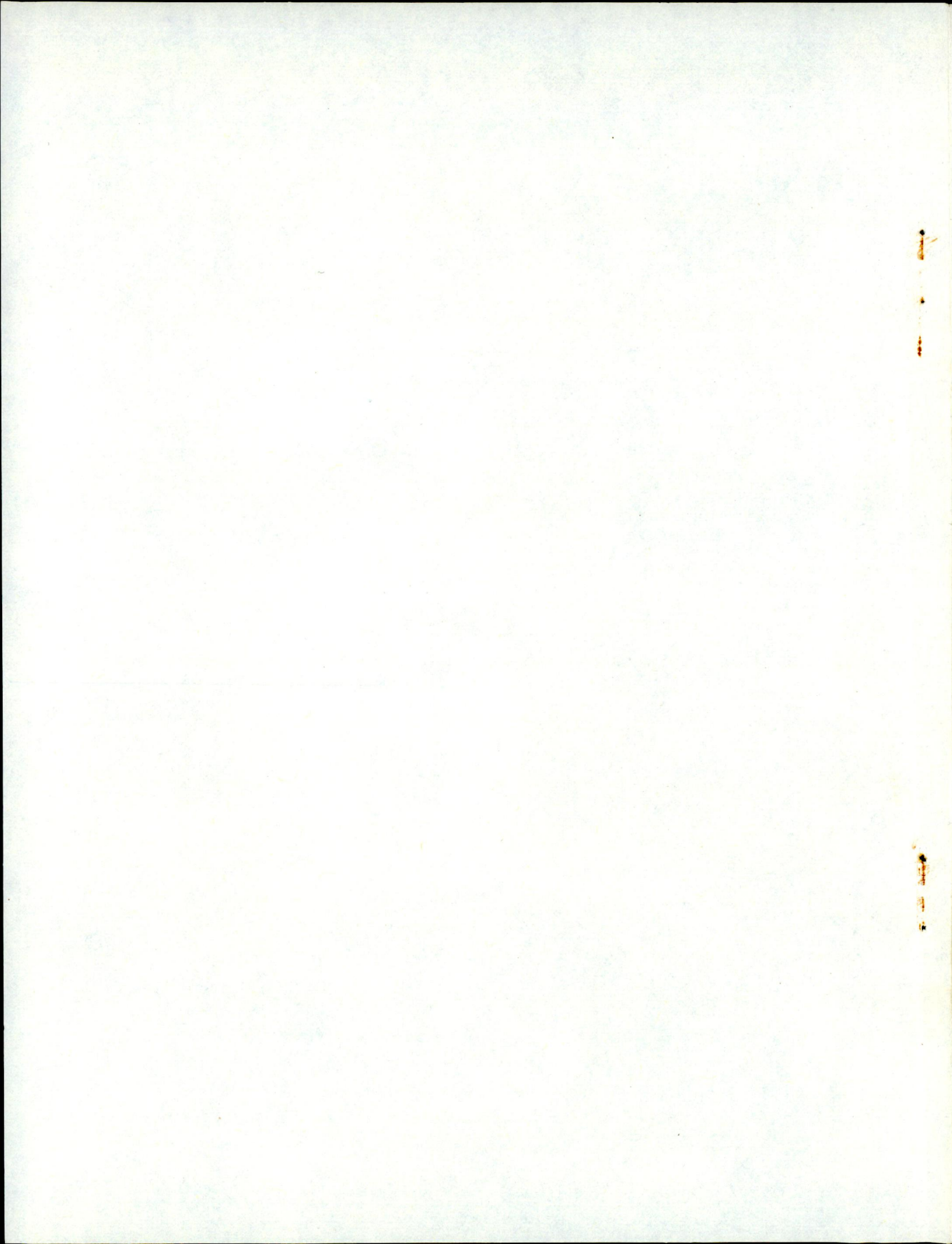
The Board of Chemistry of the University of Chicago has the honor to acknowledge the receipt of your report of the progress of the work of the Commission of the Board of Chemistry during the year 1911-12. The report is most interesting and shows a very successful year's work. The Commission has done much to advance the work of the Board of Chemistry and to bring about a better understanding of the needs of the Department of Chemistry. The Commission has also done much to bring about a better understanding of the needs of the Department of Chemistry. The Commission has also done much to bring about a better understanding of the needs of the Department of Chemistry.

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Very truly yours,  
The Board of Chemistry







**BUILDING AND CONSTRUCTION INDUSTRY LONG  
SERVICE PAYMENTS (AMENDMENT) ACT, 1980,  
No. 123**

**New South Wales**



ANNO VICESIMO NONO

**ELIZABETHÆ II REGINÆ**

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**Act No. 123, 1980.**

An Act to amend the Building and Construction Industry Long Service Payments Act, 1974, to make further provision for long service payments to workers engaged in the building and construction industry; and to enact special provisions with respect to foundation workers and certain employers.  
[Assented to, 18th November, 1980.]

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

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**Short title.** 1. This Act may be cited as the "Building and Construction Industry Long Service Payments (Amendment) Act, 1980".

**Commence-  
ment.** 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsections (1) and (3), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 5, in its application to Schedule 1 (1) (a), and Schedule 1 (1) (a) shall be deemed to have commenced on 27th December, 1974.

**Principal  
Act.** 3. The Building and Construction Industry Long Service Payments Act, 1974, is referred to in this Act as the Principal Act.

**Schedules.** 4. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SPECIAL PROVISIONS.

**Amendment  
of Act No.  
98, 1974.** 5. The Principal Act is amended in the manner set forth in Schedule 1.

**Special  
provisions.** 6. Schedule 2 has effect.

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

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of "building and construction industry"—

(i) After paragraph (a), insert :—

(a1) swimming pools;

(a2) fences;

(ii) In paragraph (i), after "for use in", insert "or in conjunction with".

(b) Section 4 (1), definition of "building and construction work"—

(i) In paragraph (a), after "construction labourer", insert "or plant operator".

(ii) Omit "but does not include work which, under section 13", insert instead "and includes work in any other industry performed in New South Wales, being work which is referred to in paragraph (a) or (b) and which, under section 13, has been determined to be building and construction work, but does not include work which, under that section".

(c) Section 4 (1), definition of "industrial agreement"—

After the definition of "Fund", insert :—

"industrial agreement" means an industrial agreement within the meaning of the Industrial Arbitration Act, 1940, or the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as amended by any Act of that Parliament, whether passed before or after the commencement of this Act;

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (d) Section 4 (1), definition of “third appointed day”—

After the definition of “second appointed day”, insert :—

“third appointed day” means the day appointed and notified under section 2 (2) of the Building and Construction Industry Long Service Payments (Amendment) Act, 1980;

## (e) Section 4 (5), (6)—

After section 4 (4), insert :—

(5) For the purpose 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) the employer of that person has elected, by notice in writing to the Board, to pay long service charges to the Board in respect of that work and has not, by such a notice, revoked that election.

(6) For the purpose of this Act, building and construction work performed by a worker in New South Wales shall be deemed not to be building and construction work if—

- (a) the employer of that worker applies to the Board for exemption from paying long service charges in respect of that work;
- (b) that employer satisfies the Board that he contributes to a like scheme relating to the payment of long service charges in a Territory of the Commonwealth or in a State

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

other than New South Wales and that he pays or is required to pay long service charges in that Territory or other State in respect of that work; and

- (c) the Board has, by notice in writing to that employer, granted the exemption and has not, by such a notice, revoked the exemption.

(2) Section 10 (1) (b1)—

After section 10 (1) (b), insert :—

- (b1) where the provisions of clause 3 of Schedule 2 to the Building and Construction Industry Long Service Payments (Amendment) Act, 1980, so require, a statement that the name of a registered worker is entered in the register as the name of a foundation worker;

(3) (a) Section 11 (1) (a)—

Omit “and” where lastly occurring.

(b) Section 11 (1) (b) (iii)—

Omit “work;”, insert instead “work;”.

(c) Section 11 (1) (b1), (b2), (b3)—

After section 11 (1) (b), insert :—

- (b1) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker and on or after the third appointed day) on which he is absent from his work as a worker under

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

a contract (other than a contract of employment) on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work;

(b2) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker and on or after the third appointed day) on which he does not perform paid work of any kind, if—

(i) he was employed as a worker under a contract of employment and that contract was terminated by his employer;

(ii) since the termination of that contract, he has not performed paid work of any kind;

(iii) the period that, as at that day, has elapsed since the termination of that contract does not exceed 4 years; and

(iv) had he been employed as a worker on that day, he would have been absent from his work on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work; and

(b3) for each working day (being a day on or after the date, as shown in the register, on which he became a registered worker) on which he is

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

absent from, and is not required to be present at, his work under a contract of employment by reason that the award or any industrial agreement relating to his work provides that ordinary working hours may be worked on 9 days per fortnight,

(d) Section 11 (1) (e1)—

After section 11 (1) (e), insert:—

(e1) in respect of the period commencing on the third appointed day and ending on the next following thirtieth day of June, be so credited pursuant to paragraph (b1) or (b2) with any day's service in the building and construction industry unless that day is the fifth or a subsequent day on which he is or would have been absent, as referred to in paragraph (b1) or (b2), as the case may be, from his work in the building and construction industry during that period;

(e) Section 11 (1) (f)—

After "paragraph (b) (iii)" where firstly occurring, insert ", (b1) or (b2)".

(f) Section 11 (1) (f)—

Omit "he is absent, as referred to in paragraph (b) (iii)", insert instead "he is or would have been absent, as referred to in paragraph (b) (iii), (b1) or (b2), as the case may be".

(g) Section 11 (1) (g)—

Omit "or".

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (h) Section 11 (1) (h)—

Omit “industry.”, insert instead “industry;”.

## (i) Section 11 (1) (i), (j), (k)—

After section 11 (1) (h), insert :—

- (i) in respect of the period commencing on the third appointed day and ending on the next following thirtieth day of June, be so credited pursuant to paragraph (b1) or (b2) with more days’ service in the building and construction industry than equals the number that bears to one hundred and ten (disregarding any fraction) the same proportion as the period, in whole months, commencing on the third appointed day and ending on the following thirtieth day of June bears to twelve;
- (j) in respect of any year ending on any thirtieth day of June subsequent to the thirtieth day of June referred to in paragraph (i), be so credited pursuant to paragraph (b1) or (b2) with more than one hundred and ten days’ service in the building and construction industry; or
- (k) in respect of the period commencing on the appointed day and ending on the third appointed day, be so credited pursuant to paragraph (b3) with any day’s service in the building and construction industry unless—
  - (i) that day does not precede any day in respect of which a long service payment or a payment under section 19D has been made; and



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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

(j) Section 11 (2)—

Omit “acordance”, insert instead “accordance”.

(k) Section 11 (3), (4)—

After section 11 (2), insert :—

(3) For the purposes of section 10 (1) (e), a plant operator whose name is entered in the register pursuant to an application made within 1 month after the third appointed day or within such longer period as the Board may in any particular case allow shall, in addition to being credited with service in the building and construction industry in accordance with subsection (1), be credited on the day on which his name is so entered in the register with the prescribed number of days’ service in the building and construction industry if—

(a) on any working day during the month of January in 1979 he performed the work of a plant operator or was absent from his work as a plant operator under a contract of employment—

(i) on any paid leave granted by his employer;

(ii) on account of incapacity arising out of injury within the meaning of the Workers’ Compensation Act, 1926, being injury arising out of or in the

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- course of his employment in the work of a plant operator; or
- (iii) on account of illness or other injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform the work of a plant operator; or
- (b) on any working day before the month of January in 1979 he performed the work of a plant operator but does not meet the requirement referred to in paragraph (a) because, during that month—
- (i) he was unable to find work in the building and construction industry, whether or not he was temporarily employed in any other industry;
- (ii) he was temporarily employed outside the State in the building and construction industry; or
- (iii) he was unable to perform the work of a plant operator on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform the work of a plant operator.
- (4) For the purposes of subsection (3), the prescribed number is the number obtained (disregarding any fraction) by multiplying by  $18\frac{1}{3}$  the number of whole months in the period commencing on 1st January, 1979, and ending on the third appointed day.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) (a) Section 13 (1) (a2)—

After section 13 (1) (a1), insert :—

(a2) that any work specified in the determination is building and construction work if it is work—

- (i) in an industry other than the building and construction industry;
- (ii) referred to in paragraph (a) or (b) of the definition of “building and construction work” in section 4 (1); and
- (iii) performed by any person under a contract of employment, being a person who, in the opinion of the committee, is usually employed in the building and construction industry;

(b) Section 13 (1) (b) (i)—

After “building and construction industry”, insert “or any other industry”.

(c) Section 13 (3B)—

After section 13 (3A), insert :—

(3B) A determination made under this section by the Committee may relate to a specified class of work performed by or for any person, notwithstanding that the determination was made pursuant to an application in relation to work performed by or for a particular person.

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (d) Section 13 (4)—

Omit the subsection, insert instead :—

(4) A determination made under this section by the Committee—

- (a) where it is made on or after the third appointed day, shall be published in the Gazette or the New South Wales Industrial Gazette or, where it is made before that day, may be so published;
- (b) has effect on and from such date (being a date before or after the date on which or being the date on which the determination is made) as may be specified in the determination; and
- (c) is final and conclusive.

## (e) Section 13 (7)—

After section 13 (6), insert :—

(7) All courts and persons acting judicially—

- (a) shall take judicial notice of a determination made or purporting to have been made under this section by the Committee and published in the Gazette or the New South Wales Industrial Gazette; and
- (b) shall, until the contrary is proved, presume that all conditions and steps precedent to the making of the determination have been complied with and performed.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) (a) Section 14 (1)—

Omit the subsection, insert instead :—

(1) In this section—

“month” means any month of January, February, March, April, May, June, July, August, September, October, November or December;

“prescribed period”, in relation to an employer, means—

(a) except as provided in paragraph (b)—a month; or

(b) such period (comprising a number of months) as the Board may, by an order served on that employer and for the time being in force, determine as the prescribed period in relation to that employer.

(b) Section 14 (3)—

Omit “An employer”, insert instead “Subject to subsection (4B), an employer”.

(c) Section 14 (3), (4) (b) (i), (4) (b) (ii)—

Omit “month” wherever occurring, insert instead “prescribed period”.

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (d) Section 14 (4A), (4B)—

After section 14 (4), insert :—

(4A) An employer who is required to lodge a return and pay long service charges under subsection (3) in respect of a prescribed period other than a month shall—

(a) lodge such provisional returns (if any) with the Board; and

(b) pay to the Board, as long service charges, such amounts (if any),

as the Board may direct by an order served on that employer and for the time being in force.

Penalty : \$1,000.

(4B) The long service charges which, but for this subsection, would be payable by an employer under subsection (3) in respect of a prescribed period shall be reduced by the amounts paid by the employer to the Board as long service charges under subsection (4A) (b) during that period, and if those amounts exceed the long service charges so payable, the amount of that excess shall be refunded by the Board or, if the Board so determines, further payments of long service charges by the employer shall be reduced by the amount of that excess.

## (e) Section 14 (7A), (8)—

After “subsection (3)” wherever occurring, insert “, (4A)”.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(f) Section 14 (8A)—

Omit “month” wherever occurring, insert instead “prescribed period”.

(g) Section 14 (8C)—

After section 14 (8B), insert :—

(8C) The Board may, where it considers that special circumstances warrant its doing so in any particular case, direct—

- (a) that the due date for payment of any long service charges be extended by such further period as may be specified in the direction; or
- (b) that any such charges may be paid in such instalments and at such times as may be specified in the direction,

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

(h) Section 14 (9) (a)—

Omit “month”, insert instead “prescribed period”.

(i) Section 14 (10)—

Omit “mainenance”, insert instead “maintenance”.

(6) (a) Section 15 (2) (a)—

Omit “and”

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 15 (2) (b) (ii)—

Omit “that day.”, insert instead “that day;”.

(c) Section 15 (2) (c), (d)—

After section 15 (2) (b), insert :—

(c) where on any day of those fifty-five days that worker was absent from his work as a worker under a contract (other than a contract of employment) on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work—the average daily pay of that worker for that day; and

(d) where on any day of those fifty-five days that worker did not perform paid work of any kind but, had he been employed as a worker, he would have been absent from his work on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work—the average daily pay of that worker for that day.

(7) (a) Section 17 (2) (d)—

Omit “is a foundation worker.”.



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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 17 (2) (f), (3) (c)—

Omit “otherwise than as an apprentice” wherever occurring.

(c) Section 17 (3) (b)—

After “worker;”, insert “or”.

(d) Section 17 (3) (c)—

Omit “(b); or”, insert instead “(b),”.

(e) Section 17 (3) (d)—

Omit the paragraph.

(f) Section 17 (4)—

Omit “subsections (2) (d) and (3) (d)”, insert instead “subsection (2) (d)”.

(g) Section 17 (6) (c)—

Omit “, under subsection (2) (f) in respect of a foundation worker or under subsection (3) (d)”, insert instead “or subsection (2) (f)”.

(8) (a) Section 19B (a)—

Omit “and” where lastly occurring.

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (b) Section 19B (b) (iii)—

Omit “work,”, insert instead “work; and”.

## (c) Section 19B (b1)—

After section 19B (b), insert :—

- (b1) for each working day (being a day on or after the date, as shown in that register, on which that employer became a registered employer in respect of that worker) on which that worker is absent from, and is not required to be present at, his work as a worker under a contract of employment with that employer by reason that the award or any industrial agreement relating to his work provides that ordinary working hours may be worked on 9 days per fortnight,

## (9) Section 19D (1)—

Omit “were provided—

- (c) where that person is an employee referred to in paragraph (b) (i)—by the employer who is the registered employer in respect of that person;
- (d) where that person is a registered worker—by his employer; or
- (e) where that person is a personal representative referred to in paragraph (b) (iii)—by the employer who provided those benefits,

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

pay to that employer an amount calculated in accordance with the following formula :—”, insert instead “were provided or within such longer period as the Board may in any particular case allow, pay—

- (c) where that person is an employee referred to in paragraph (b) (i)—to the employer who is the registered employer in respect of that person;
- (d) where that person is a registered worker—to his employer; or
- (e) where that person is a personal representative referred to in paragraph (b) (iii)—to the employer who provided those benefits,

an amount calculated in accordance with the following formula :—”.

(10) Section 20 (8)—

Omit “with the approval of the Treasurer”.

(11) Section 26 (b) (ii), (c) (ii)—

Omit “by certified mail” wherever occurring.

(12) Section 30A—

After section 30, insert :—

30A. (1) Any person who is appointed after the third appointed day as an official manager, or as a receiver or manager of the property, of a company which was, at any time within the period of 3 years before his appointment, an employer of workers shall—

Receivers,  
managers,  
etc., to  
give notice.

- (a) within 14 days after his appointment, serve on the Board notice in writing of his appointment;  
**and**

*Building and Construction Industry Long Service Payments (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) within 14 days after he has lodged a statement of the affairs of the company with the Corporate Affairs Commission, lodge with the Board, a copy of that statement.

Penalty : \$1,000.

- (2) A reference in subsection (1) (b) to a statement of the affairs of a company is a reference—

(a) in relation to an official manager of the company—to a copy of the documents referred to in section 203A (7) of the Companies Act, 1961; or

(b) in relation to a receiver or manager of the property of the company—to a copy of the documents referred to in section 193 (1) (c) (i) of the Companies Act, 1961.

- (3) Subsection (1) (a) does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager.

- (13) (a) Section 31 (1)—

Omit “which is an employer of workers”, insert instead “which was, at any time within the period of 3 years before his appointment as liquidator, an employer of workers”.

- (b) Section 31 (1A), (2), (2A), (3)—

Omit section 31 (2) and (3), insert instead :—

(1A) The liquidator shall lodge with the Board a statement of the affairs of the company in a form approved by the Board.

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Board shall, as soon as practicable after the statement is lodged with the Board—

- (a) notify the liquidator that the provisions of subsection (3) apply to him and specify in that notification the amount which appears to the Board to be sufficient to provide for any long service charges which then are or which will thereafter become payable by the company; or
- (b) notify the liquidator that the provisions of subsection (3) do not apply to him.

(2A) The liquidator shall not, without the leave of the Board, part with any of the assets of the company until he has been so notified.

(3) Where the liquidator is notified in the terms referred to in subsection (2) (a), the liquidator—

- (a) shall, subject to section 25 of the Pay-roll Tax Act, 1971, set aside out of the assets available for the payment of the long service charges, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
- (b) shall, to the extent of the value of the assets which he is required to set aside, be liable as trustee to pay the long service charges.

(c) Section 31 (9)—

After section 31 (8), insert :—

(9) In relation to a liquidator who had served notice of his appointment on the Board before the third appointed day but who had not been notified by

*Building and Construction Industry Long Service Payments (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the Board pursuant to subsection (2), as in force before that day, this section shall be read and construed as if the amendments made to this section by the Building and Construction Industry Long Service Payments (Amendment) Act, 1980, had not been made.

## (14) (a) Section 37 (2)—

Omit “that subsection”, insert instead “subsection (1) (a) or (c)”.

## (b) Section 37 (2A)—

After section 37 (2), insert :—

(2A) A person shall not neglect or fail to comply with a requirement made under subsection (1) (b) or (b1).

Penalty : \$1,000.

## (15) Section 38A—

After section 38, insert :—

38A. A certificate purporting to be under the hand of a prescribed officer certifying—

- (a) that a person has or has not, on a date specified in the certificate, lodged with the Board a return under a provision of this Act so specified for a period so specified; or

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

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) that a person has or has not, on a date specified in the certificate, paid to the Board the long service charges payable in respect of a worker so specified for a period so specified,

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

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SCHEDULE 2.

Sec. 6.

## SPECIAL PROVISIONS.

1. Expressions used in this Schedule shall, except in so far as the context or subject-matter otherwise indicates or requires, have the same meanings respectively as in the Principal Act. Interpre-  
tation.

2. (1) In this clause, "relevant period" means the period commencing on the appointed day and ending immediately before the second appointed day. Payments  
to  
employers  
in respect  
of bene-  
fits  
provided  
under the  
Long  
Service  
Leave Act,  
1955, to  
unregistered  
workers.

(2) Where—

(a) after the appointed day but before the third appointed day an employer provided to any person any benefits referred to in section 19 (1) of the Principal Act, as in force during the relevant period, in respect of any period of service in the building and construction industry, being a period of service before the second appointed day; and

(b) that person—

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

(ii) was the personal representative of an employee who, at the date of his death, was such a worker,

the Board shall, upon application therefor made in writing within 3 months after the third appointed day or within such longer period as the Board may in any particular case allow, pay to that employer such amount as

*Building and Construction Industry Long Service Payments (Amendment).*SCHEDULE 2—*continued.*SPECIAL PROVISIONS—*continued.*

would have been payable to him had the amendments set out in Schedule 4 (6) to the Building and Construction Industry Long Service Payments (Amendment) Act, 1976, been in force when those benefits were provided as if—

- (c) that employer had been a registered employer during the relevant period and the application had been made by him as a registered employer;
- (d) that employer had been credited in the employers' register in respect of that person with the number of working days required by section 19A (1) (c) of the Principal Act; and
- (e) the amendments set out in Schedule 4 (1) to the Building and Construction Industry Long Service Payments (Amendment) Act, 1976, had been in force for the purpose of calculating that amount.

## (3) Where—

- (a) an employer employed a person at any time during the relevant period under a contract of employment;
- (b) that person was an employee who, during that time, was a worker (other than a registered worker);
- (c) that employer is not entitled to make an application for a payment under subclause (2) in respect of that employee; and
- (d) that employer is, on the third appointed day, a registered employer in respect of that employee,

the Board may, notwithstanding anything to the contrary in section 19A of the Principal Act, fix a date during the relevant period as the date on which that employer became a registered employer in respect of that employee.

## 3. (1) Where—

- (a) a registered worker (other than a foundation worker) applies to have his name entered in the register as the name of a foundation worker in accordance with subclause (3);
- (b) that registered worker became a registered worker, or applied to become a registered worker, on or before 30th June, 1975; and

Certain  
workers  
entitled  
to be  
registered  
as  
foundation  
workers.



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

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SCHEDULE 2—*continued.*

SPECIAL PROVISIONS—*continued.*

- (c) that registered worker was a worker before 1st February, 1975, but was not entitled to have his name entered in the register as the name of a foundation worker pursuant to section 10 (1) (b) of the Principal Act because, during that month—
- (i) he was unable to find work in the building and construction industry, whether or not he was temporarily employed in any other industry;
  - (ii) he was temporarily employed outside the State in the building and construction industry; or
  - (iii) he was unable to perform building and construction work on account of illness or injury, being illness or injury certified in writing by a medical practitioner to be a reasonable ground for his inability to perform building and construction work,

the Board shall cause to be entered in the register a statement that the name of that registered worker is entered in the register as the name of a foundation worker.

(2) Subclause (1) (c) (iii) does not apply in the case of a registered worker who did not again become a worker before 1st February, 1976.

(3) A person may, within the period of 3 months after the third appointed day or within such longer period as the Board may in any particular case allow, apply, in a form approved by the Board, to the Board to have his name entered in the register as the name of a foundation worker pursuant to subclause (1).

*In the name and on behalf of Her Majesty I assent to this Act.*

A. R. CUTLER,  
*Governor.*

*Government House,  
Sydney, 18th November, 1980.*

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980





