

(Reprint No. 1)

SOUTH AUSTRALIA

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE ACT, 1987

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

Section

1. Short title
2. Commencement
3. Repeal
4. Interpretation
5. Application of this Act

PART II

THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE BOARD

6. The Board
7. Membership of Board
8. Conditions of membership
9. Fees and allowances
10. Proceedings at meetings of the Board
11. Immunity of Board's members
12. Delegation by Board
13. Board may make use of public facilities

PART III

LONG SERVICE LEAVE ENTITLEMENTS

14. Effective service entitlement
15. Crediting effective service under this Act and the Long Service Leave Act
16. Long service leave entitlement
17. Pro-rata payments for effective service of less than 120 months
18. Preservation of entitlements in certain cases
19. Employment during leave

PART IV

FUNDING

20. *The Construction Industry Fund*
- 20a. *The Electrical and Metal Trades Fund*
- 20b. Adjustment between the Funds
- 20c. Exemption from taxes and charges
21. Investment of the Funds
22. Loans for training purposes
23. Borrowing by the Board
24. Investigation of the Funds
25. Accounts and audit

PART V

LEVIES

26. Imposition of levy
27. Returns by employers
28. Recovery on default
29. Penalty for late payment
30. Power to require information, etc.
31. Recovery of levies
32. Refund of overpayments

PART VI

APPEALS

33. *The Appeals Tribunal*
34. Appeals
35. Powers of Tribunal
36. Practice and procedure
37. Effect of pending appeal

PART VII

MISCELLANEOUS

38. Reciprocal arrangements with other States and Territories
39. Powers of inspection
40. Records
41. Service of documents
42. Annual report

- 43. Offences
- 44. Evidentiary provision
- 45. Expiation of offences
- 46. Regulations

SCHEDULES

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE ACT, 1987

being

Long Service Leave (Building Industry) Act, 1987, No. 77 of 1987 [Assented to 19 November 1987]¹

as amended by

Long Service Leave (Building Industry) Act Amendment Act, 1989, No. 72 of 1989 [Assented to 29 October 1989]²
Long Service Leave (Building Industry) Act Amendment Act, 1990, No. 35 of 1990 [Assented to 26 April 1990]³

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to provide for the granting of long service leave to workers in the building industry; to repeal the Long Service Leave (Building Industry) Act, 1975; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Construction Industry Long Service Leave Act, 1987*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Repeal

3. The *Long Service Leave (Building Industry) Act, 1975*, is repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“agreement” means—

(a) an industrial agreement within the meaning of the *Industrial Conciliation and Arbitration Act, 1972*;

or

(b) an industrial agreement filed in the office of the Industrial Registrar under the *Conciliation and Arbitration Act 1904* of the Commonwealth:

¹Came into operation 1 April 1988: *Gaz.* 24 March 1988, p. 692.

²Came into operation 1 December 1989: *Gaz.* 16 November 1989, p. 1501.

³Came into operation 1 July 1990: *Gaz.* 17 May 1990, p. 1358.

“allowable absence”, in relation to a construction worker, means an absence of that worker from work, being an absence of a kind declared by regulation to be an allowable absence:

“award” includes—

- (a) an award or order of the Industrial Commission;
- (b) an award of a conciliation committee;
- (c) an award or order of the Commonwealth Conciliation and Arbitration Commission:

“the Board” means the Construction Industry Long Service Leave Board:

“builder” means a person who carries out building work:

“building” includes part of a building:

“building industry” means the industry of carrying out building work:

“building site” means a place at which building work is carried out and includes any adjacent work area:

“building work” means—

- (a) the construction or erection of a building or structure that is or is to be fixed to the ground and wholly or partially fabricated on site;
- (b) any preliminary site preparation work (including pile driving) for the construction or erection of any such building or structure;
- (c) the alteration, maintenance, repair or demolition of any building or structure;
- (d) the laying of pipes and other prefabricated materials in the ground, and any associated excavation work:

“construction industry” means the building industry or the electrical and metal trades industry:

“construction work” means building work or electrical or metal trades work:

“construction worker” means a person to whose employment this Act applies (see section 5) and includes a former construction worker:

“contract of service” includes an apprenticeship agreement:

* * * * *

“corresponding law” means a law of another State, or of a Territory, of the Commonwealth declared by regulation to be a corresponding law:

“effective service” means a period of service as a construction worker credited under this Act:

“the electrical and metal trades industry” means the industry of carrying out electrical or metal trades work:

“electrical or metal trades work” means work that involves—

- (a) electrical or metal work on a building site, including on site work that is related to the construction, erection, installation, extension, alteration, maintenance, repair, servicing or dismantling of any plant, plant facility or equipment;

(b) the construction, erection, installation, extension or dismantling (on site) of—

(i) a transmission line, or any plant, plant facility or equipment used in connection with the supply of electricity;

(ii) a lift or escalator;

or

(iii) any air-conditioning, ventilation or refrigeration system or equipment;

(c) the alteration, maintenance, repair or servicing (on site) of any works, plant, plant facility or equipment referred to in paragraph (b);

(d) other engineering projects involving electrical or metal work:

“employer” means a person by whom a construction worker is employed:

“the Funds” means the *Construction Industry Fund* and the *Electrical and Metal Trades Fund* referred to in Part IV:

“inspector” means an inspector appointed under the *Industrial Conciliation and Arbitration Act, 1972*:

“ordinary hours”, in relation to a period of service by a construction worker, means the number of hours prescribed by an award or agreement as the ordinary hours of work in a week in relation to work of the kind performed by that construction worker during that period of service:

“ordinary weekly pay”, in relation to work as a construction worker, means the weekly base rate of pay for ordinary hours prescribed by an award or agreement in relation to work of that kind (including any remuneration or payment of a class declared by regulation to be part of ordinary pay):

* * * * *

“the repealed Act” means the *Long Service Leave (Building Industry) Act, 1975*, repealed by this Act:

“special rates or allowances” means—

(a) remuneration categorized by an award or agreement as special rates or allowances;

(b) remuneration categorized by the regulations as special rates or allowances:

“structure” includes—

(a) a tank or other structure for the storage or supply of water;

(b) sewerage or effluent drains and associated structures;

(c) a bridge, viaduct, aqueduct or tunnel;

(d) a chimney stack or cooling tower;

(e) a silo;

(f) a dock, jetty, pier or wharf:

“the Tribunal” means the Appeals Tribunal established under the repealed Act and continued under this Act.

* * * * *

(2) For the purposes of this Act, periods of effective service will be reckoned in months to one decimal place.

Application of this Act

5. (1) Subject to this section, this Act applies to a person's employment if—
- (a) that person works under a contract of service in the construction industry;
 - (b) an award referred to in the first schedule or the regulations prescribes a weekly rate of pay for work of that kind;
- and
- (c) the employment involves on site work that makes up the whole, or a proportion of at least one-half, of the period of employment over—
 - (i) the whole period of employment;
 - (ii) the first month of employment;or
 - (iii) any three-month period of employment,

but without effecting any accrued effective service entitlement, this Act ceases to apply to employment if the employee has not worked on site for the last three months.

(2) Where this Act applies to employment by virtue of subsection (1)(c)(iii), it will be taken to have commenced to apply from the commencement of the three-month period referred to in that subsection.

(3) Where—

- (a) a person carries out construction work on premises owned or occupied by his or her employer (not being premises intended for subsequent sale or lease);
- and
- (b) that is the sole construction work in which the person is engaged by that employer,

this Act does not apply to that employment.

(4) This Act does not apply in relation to employment by—

- (a) the Crown;
- (b) an agency or instrumentality of the Crown;
- (c) a council;
- (d) a prescribed employer or an employer of a prescribed class.

(5) A regulation cannot be made for the purposes of this section except after consultation with, or on the recommendation of, the Board.

PART II

THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE BOARD

The Board

6. (1) The *Construction Industry Long Service Leave Board* is established.
- (2) The Board is a body corporate.
- (3) The Board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.
- (4) An apparently genuine document that appears to bear the common seal of the Board and to be signed by the presiding officer and the chief executive officer of the Board, or by any two of its members, will be taken, in any legal proceedings, in the absence of proof to the contrary, to be duly executed by the Board.

Membership of the Board

7. (1) The Board consists of seven members, appointed by the Governor, of whom—
 - (a) one (who will be the presiding officer of the Board) will be a person nominated by the Minister;
 - (b) three will be nominated by the Minister after taking into account the recommendations of employer associations, to represent the interests of employers in the construction industry;and
 - (c) three will be nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council, to represent the interests of construction workers.
- (2) The Governor may appoint a suitable person to be a deputy of a member of the Board and that person may, in the absence of that member from the duties of office, act as a member of the Board.
- (3) A deputy of a member of the Board is to be nominated in the same way as the member.

Conditions of membership

8. (1) A member of the Board will be appointed for such term of office (not exceeding five years) as the Governor determines and specifies in the instrument of appointment and will, on the expiration of a term of office, be eligible for reappointment.
- (2) The Governor may remove a member of the Board from office if the member—
 - (a) becomes mentally or physically incapable of carrying out satisfactorily the duties of office;
 - (b) is guilty of neglect of duty or dishonourable conduct;or
 - (c) having been appointed to represent the interests of employers or construction workers in the construction industry, ceases, in the opinion of the Governor, to be a suitable person to act as such a representative.
- (3) Subject to subsection (4), the office of a member of the Board becomes vacant if—
 - (a) the member dies;

- (b) the member's term of office expires;
 - (c) the member resigns by written notice addressed to the Minister;
 - (d) the member is absent without leave of the Minister from three consecutive meetings of the Board;
- or
- (e) the member is removed by the Governor under subsection (2).

(4) A member of the Board whose term of office expires may continue to act as a member until a fresh appointment is made.

Fees and allowances

9. (1) A member of the Board is entitled to such fees and allowances as the Governor may determine.

(2) Fees and allowances payable under subsection (1) will be paid out of the Fund.

Proceedings at meetings of the Board

10. (1) Meetings of the Board will be chaired by the presiding officer and, in the absence of the presiding officer, by a person chosen from amongst their own number by the members present.

(2) Subject to subsection (3), the Board may act notwithstanding vacancies in its membership.

(3) Four members of the Board constitute a quorum of the Board.

(4) A decision carried by at least four members of the Board at a meeting of the Board is a decision of the Board.

(5) Each member of the Board present at a meeting is entitled to one vote on any matter arising for decision at that meeting.

(6) The Board must have accurate minutes kept of its proceedings at meetings.

(7) Subject to this Act, the business of the Board will be conducted in a manner determined by the Board.

Immunity of Board's members

11. (1) No liability attaches to a member of the Board for an honest act or omission by the member or the Board, in the exercise or purported exercise of powers or functions under this Act.

(2) A liability that would, but for subsection (1), lie against a member of the Board lies instead against the Crown.

Delegation by Board

12. (1) The Board may, by instrument in writing, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to a member of the Board or any other person engaged in the administration of this Act;

(b) may be made subject to such conditions as the Board thinks fit;

and

(c) is revocable at will and does not derogate from the power of the Board to act in any matter itself.

(3) In any legal proceedings an apparently genuine certificate, purporting to be under the seal of the Board, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of the particulars.

Board may make use of public facilities

13. The Board may, by arrangement with a department of the Public Service of the State, a public authority or a public instrumentality, make use of the services, facilities or staff of the department, authority or instrumentality.

PART III

LONG SERVICE LEAVE ENTITLEMENTS

Effective service entitlement

14. (1) Subject to this Act, a construction worker's entitlement to long service leave, or payment on account of long service leave, is determined according to his or her aggregate effective service entitlement.

(2) Whenever a person works as a construction worker, an effective service entitlement, calculated in accordance with the following formula, accrues in respect of the period of service:

$$E = \frac{TH}{OH} \times \frac{12}{52}$$

where—

E is the effective service entitlement (expressed in months)

TH is the sum of the total number of hours worked as a construction worker during the period of service (disregarding any hours worked in any week in excess of ordinary hours) and the total number of ordinary hours for which the person was absent from that work during that period as a result of allowable absences

OH is the ordinary hours in relation to the period of service.

(3) Where—

(a) a construction worker who has an effective service entitlement of less than 120 months is dismissed from employment as a construction worker;

and

(b) the Board is satisfied, after affording the former construction worker and his or her former employer an opportunity to be heard, that the construction worker was properly dismissed on the ground of serious and wilful misconduct,

any effective service entitlement of the worker accrued in that employment is cancelled.

(4) Where—

(a) a construction worker has an effective service entitlement of less than 84 months;

(b) the construction worker—

(i) has not previously had an effective service entitlement of 120 months or more;

or

(ii) has not received, or become entitled to receive, long service leave under the *Long Service Leave Act, 1987* (or a corresponding previous enactment) for service including service as a construction worker;

and

(c) the construction worker ceases to be employed as such for a continuous period of 36 months or more for some reason other than physical or mental disability and no right to preservation of the effective service entitlement arises under this Act,

the effective service entitlement will be cancelled (but the subsection does not apply where the construction worker continues in employment by the person in whose employment the entitlement accrued (either wholly or in part)).

(5) Where a person takes long service leave, or receives a payment on account of long service leave, the person's effective service entitlement is reduced accordingly.

Crediting effective service under this Act and the Long Service Leave Act

15. (1) Where a person employed as a construction worker commences work in some other capacity in the service of the same employer, the person's continuity of service is preserved and any period of effective service credited under this Act will be credited to the person under the *Long Service Leave Act, 1987* (and cancelled under this Act).

(2) Where a person employed in some capacity other than as a construction worker commences work as a construction worker in the service of the same employer, the person's continuity of service is preserved and the period of that person's service (expressed in months) calculated in accordance with the *Long Service Leave Act, 1987*, up to the point of the change in the nature of the employment, will be credited as effective service entitlement for the purposes of this Act.

(3) Where—

(a) a person's service under the *Long Service Leave Act, 1987*, includes a period of effective service credited under subsection (1);

and

(b) the person becomes entitled to long service leave, or to a payment in lieu of long service leave, under that Act,

the Board must pay to the person's employer an amount calculated as follows:

$$A = \frac{OWP \times N \times E}{CS}$$

where—

A is the amount payable

OWP is the person's ordinary weekly rate of pay applicable under the *Long Service Leave Act, 1987*

N is the number of weeks leave required to be granted, or the number of weeks in respect of which the payment in lieu of long service leave is made, under the *Long Service Leave Act, 1987*

E is the effective service entitlement of the person as a construction worker under this Act

CS is the person's period of continuous service for the purposes of the *Long Service Leave Act, 1987*, expressed in months to one decimal place.

(4) Where—

(a) a person's effective service entitlement under this Act includes a period of service credited under subsection (2);

and

(b) the person becomes entitled to long service leave, or to a payment on account of long service leave, under this Act,

the Board may recover from the person's employer (being the employer referred to in subsection (2)) an amount calculated as follows:

$$A = \frac{OWP \times N \times CS}{E}$$

where—

- A is the amount recoverable
- OWP is the person's ordinary weekly pay applicable to the person under this Act
- N is the number of weeks leave required to be granted, or the number of weeks in respect of which the payment on account of long service leave is made, under this Act
- CS is the person's period of continuous service accrued under the *Long Service Leave Act, 1987*, at the time that the person commenced work as a construction worker, expressed in months to one decimal place
- E is the effective service entitlement of the person as a construction worker under this Act in respect of which the entitlement arises.

(5) An amount recoverable under this section may be recovered as a debt.

Long service leave entitlement

16. (1) Subject to this Act, a construction worker who has an effective service entitlement of 120 months is entitled to 13 weeks long service leave.

(2) Long service leave must be granted by the employer by whom the construction worker is employed when the entitlement arises as soon as practicable (taking into account the needs of the employer) after the person becomes entitled to the leave.

(3) Where—

(a) a construction worker takes long service leave;

or

(b) the construction worker's employment by the employer referred to in subsection (2) is terminated before he or she takes accrued long service leave,

the Board must pay to the person on account of that leave an amount equal to 13 times the ordinary weekly pay for work of the kind last performed by the person as a construction worker.

(4) For the purposes of subsection (3), ordinary weekly pay will be determined at the time of payment unless the payment is made more than 12 months after the effective service entitlement of 120 months was reached, in which case it will be determined by reference to rates of pay prevailing at the expiration of that 12 month period, or at such later time as the Board, on the application of the construction worker or the employer, determines.

(5) If a person dies, any entitlement of the person under this section vests in his or her personal representative.

Pro-rata payments for effective service of less than 120 months

17. (1) Where, on application to the Board in a form approved by the Board, the Board is satisfied that—

(a) (i) a construction worker has attained an effective service entitlement of 84 months or more (but less than 120 months);

or

(ii) a construction worker has attained an effective service entitlement of less than 84 months and—

— has previously had an effective service entitlement of 120 months or more;

or

— has received, or become entitled to receive, long service leave under the *Long Service Leave Act, 1987* (or a corresponding previous enactment) for service including service as a construction worker;

and

(b) the construction worker has—

(i) died;

(ii) ceased to work as a construction worker and has attained the prescribed retiring age;

(iii) ceased to work as a construction worker because of a physical or mental disability that will prevent him or her from working as a construction worker for a continuous period of 12 months or more;

or

(iv) ceased to work as a construction worker and will not be working as a construction worker for a continuous period of 12 months or more (from the time when he or she ceased to work as a construction worker),

the Board must pay to the person (or his or her personal representative) an amount calculated as follows:

$$A = \frac{OWP \times E \times 13}{120}$$

where—

A is the amount payable

OWP is the ordinary weekly pay for work of the kind last performed as a construction worker as at—

— in relation to an application under paragraph (b)(i)—the day on which the person died;

— in relation to an application under paragraph (b)(ii)—the day on which the person ceased to be a construction worker or attained the prescribed retiring age, whichever last occurred;

— in relation to an application under paragraph (b)(iii)—the day on which the application was made;

— in relation to an application under paragraph (b)(iv)—

— — if the person has not worked as a construction worker for a continuous period of 12 months or more—the day on which that period of 12 months expired;

— — in any other case—the day on which the person ceased to work as a construction worker

E is the effective service entitlement.

(2) If the Board rejects an application under subsection (1), the Board must give the applicant written notice of its decision (setting out a brief statement of the Board's reasons for making its decision).

Preservation of entitlements in certain cases

18. (1) Where—

- (a) a person who has an effective service entitlement ceases to be employed as a construction worker;
- (b) the person is not entitled to long service leave or a payment for *pro rata* long service leave;
- (c) the person commences work as a self-employed contractor in the construction industry within 36 months after cessation of his or her employment as a construction worker;

and

- (d) the person provides notice of his or her work as a contractor to the Board in accordance with the regulations,

the effective service entitlement is preserved.

(2) Where the person, or his or her personal representative, satisfies the Board that the aggregate period of work in the construction industry (as a construction worker and subsequently as a contractor) totals 84 months or more, the Board must pay to the person (or his or her personal representative) an amount calculated as follows:

$$A = \frac{OWP \times E \times 13}{120}$$

where—

- A is the amount payable
- OWP is the ordinary weekly pay for work of the kind last performed by the person as a construction worker as at the day of payment
- E is the effective service entitlement.

Employment during leave

19. (1) A construction worker must not, while on long service leave, engage in any other employment in place of his or her employment as a construction worker.

Penalty: \$1 000.

(2) An employer must not, knowing that a construction worker is on long service leave, engage him or her in employment so that a breach of subsection (1) is committed.

Penalty: \$1 000.

PART IV
FUNDING

The Construction Industry Fund

20. (1) The Long Service Leave (Building Industry) Fund continues in existence as the *Construction Industry Fund*.

(2) The *Construction Industry Fund* will be administered by the Board.

(3) The *Construction Industry Fund* will consist of—

- (a) money standing to the credit of the fund immediately before the commencement of this section;
- (b) levies received by the Board from employers, other than levies that must be credited to the *Electrical and Metal Trades Fund*;
- (c) such proportion of the proceeds of investments made by the Board as the Board determines to be attributable to the investment of the fund;
- (d) any money advanced to the Board for the purposes of the fund;
- (e) such proportion of the penalties and fines recovered under this Act as the Board determines to be payable to the fund;

and

(f) any other money payable to the fund under this Act.

(4) There will be paid from the *Construction Industry Fund*—

- (a) the long service leave benefits that the Board is liable to pay under this Act (but subject to any contribution payable from the *Electrical and Metal Trades Fund*);
- (b) such of the costs incurred by the Board in the performance of its functions as the Board determines to be reasonably payable from the fund;
- (c) any other money authorized to be paid from the fund under this Act.

The Electrical and Metal Trades Fund

20a. (1) The Long Service Leave (Electrical Contracting and Metal Trades) Fund continues in existence as the *Electrical and Metal Trades Fund*.

(2) The *Electrical and Metal Trades Fund* will be administered by the Board.

(3) The *Electrical and Metal Trades Fund* will consist of—

- (a) money standing to the credit of the fund immediately before the commencement of this section;
- (b) levies received by the Board from employers that must be credited to the fund;
- (c) such proportion of the proceeds of investments made by the Board as the Board determines to be attributable to the investment of the fund;
- (d) any money advanced to the Board for the purposes of the fund;
- (e) such proportion of the penalties and fines recovered under this Act as the Board determines to be payable to the fund;

and

(f) any other money payable to the fund under this Act.

(4) There will be paid from the *Electrical and Metal Trades Fund*—

- (a) any money payable under subsection (6);
- (b) a proportion of any long service leave benefit that the Board is liable to pay under this Act in respect of a construction worker to whom the second schedule applies (the proportion being equal to the amount payable in respect of the effective service entitlement credited to the construction worker under that schedule);
- (c) such other costs incurred by the Board in the performance of its functions as the Board determines to be reasonably payable from the fund;
- (d) any other money authorized to be paid from the fund under this Act.

(5) The Board may, with the approval of the Treasurer, advance money from the *Construction Industry Fund* to the *Electrical and Metal Trades Fund*.

(6) Any money paid under subsection (5) (and any money advanced to the Long Service Leave (Electrical Contracting and Metal Trades) Fund before the commencement of this section)—

- (a) will be a charge on the *Electrical and Metal Trades Fund*;
- (b) must be repaid to the *Construction Industry Fund* in accordance with the directions of the Treasurer;

and

- (c) until repaid, will bear interest at a rate fixed by the Treasurer in accordance with subsection (7).

(7) The rate of interest fixed by the Treasurer under subsection (6)—

- (a) must be fixed at the beginning of each half-year for the ensuing period of six months;
- (b) must not be fixed until after consultation with the Board;

and

- (c) must not be fixed at a rate that is less than the average rate of interest on any new investments made by the Board during the period of six months immediately preceding the date on which the rate is fixed.

(8) In subsection (8)—

“half-year” means—

- (a) a period beginning on 1 January and ending on 30 June in any year;
- (b) a period beginning on 1 July and ending on 31 December in any year.

Adjustment between the Funds

20b. The Board may, on the basis that an amount has been paid to or from the wrong fund under this Act, or for any other proper cause, make such adjustments (including the adjustment of interest) between the Funds as may be determined by the Board.

Exemption from taxes and charges

20c. The Funds, and all transactions relating to the Funds, are exempt from all taxes and other charges imposed under the law of the State.

Investment of the Funds

21. (1) The Board may invest money that is not immediately required for the purposes of the Funds in such manner as the Treasurer may from time to time approve.

(2) An approval of the Treasurer for the purposes of subsection (1) may be given in relation to a particular investment or dealing or in relation to investments or dealings of a particular kind.

Loans for training purposes

22. (1) The Board may, with the approval of the Minister and the Treasurer, lend money from the Funds to an industrial organization for the purpose of establishing or operating a group training scheme for the construction industry approved by the Industrial and Commercial Training Commission.

(2) A loan under subsection (1) will be subject to such terms and conditions as the Minister and the Treasurer think appropriate and may be free of interest.

Borrowing by the Board

23. (1) The Board may, for the purposes of the Funds, borrow money from the Treasurer or, with the approval of the Treasurer, from any other person.

(2) A liability incurred with the approval of the Treasurer under subsection (1) is guaranteed by the Treasurer.

(3) A liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) will be satisfied out of the General Revenue of the State (which is appropriated to the necessary extent).

Investigation of the Funds

24. (1) An investigation into the state and sufficiency of the Funds must be carried out on a three-yearly basis.

(2) The investigation will be carried out by the Public Actuary (who is actuary to the Board).

(3) The Public Actuary will report to the Board on the result of the investigation and must state whether any reduction or increase is necessary in the rates of contribution to the Funds.

(4) The Board must, on the receipt of a report under subsection (3), immediately supply a copy of the report to the Minister.

(5) The Minister must, within six sitting days after receipt of a report supplied under subsection (4), cause a copy of the report to be laid before both Houses of Parliament.

Accounts and audit

25. (1) The Board must cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Board.

PART V

LEVIES

Imposition of levy

26. (1) An employer in the construction industry is liable to pay a levy to the Board under this section.

(2) Subject to this section, the levy payable by an employer is the prescribed percentage of the total remuneration (excluding any amounts by way of special rates or allowances) paid to each of the employer's construction workers during the period to which the levy relates.

(3) No levy is payable by an employer in respect of a construction worker who is employed by the employer for less than three days in any month.

(4) The regulations may, for the purposes of subsection (2), prescribe two percentages—

(a) one being a percentage payable by any employer who was, immediately before the commencement of the *Long Service Leave (Building Industry) Act Amendment Act, 1990*, bound by the *Metal Industry (Long Service Leave) Award 1984*, in respect of any remuneration (excluding any amounts by way of special rates or allowances) paid to a construction worker in respect of work of a kind for which a weekly rate of pay is fixed by an award referred to in the third schedule;

and

(b) one being a percentage payable in respect of all other circumstances.

(5) Any part of a levy that is paid to the Board at the rate referred to in subsection (4)(a) must be credited to the *Electrical and Metal Trades Fund*.

(6) The regulations may—

(a) declare payments made to or for the benefit of a construction worker that will be taken as constituting remuneration for the purposes of this section;

and

(b) declare payments made to or for the benefit of a construction worker that will not be taken as constituting remuneration for the purposes of this section.

Returns by employers

27. (1) Every employer in the construction industry must, within 21 days after the end of each period prescribed by the regulations ("the return period"), furnish the Board with a return in a form approved by the Board containing such information as may be prescribed or required by the Board.

(2) The return must be accompanied by the levy payable by the employer in respect of the return period.

(3) The Board may require an employer to provide—

(a) a certificate signed by the employer, or a person acting on the employer's behalf, verifying the information contained in a return;

or

(b) some other verification of that information of a kind stipulated by the Board.

(4) The Board may—

(a) determine that a requirement of this section will not apply to a particular employer or employers of a particular class;

and

(b) impose, by notice to the particular employer or by notice in the *Gazette*, such other requirements on that employer or those employers as may be appropriate in the circumstances.

(5) Where—

(a) an employer fails to furnish a return under subsection (1);

(b) an employer includes in a return information that is, to the knowledge of the employer, false or misleading in a material particular;

or

(c) an employer fails to comply with a requirement imposed under subsection (3) or (4),

the employer is guilty of an offence.

Penalty: \$5 000.

Recovery on default

28. (1) Where an employer—

(a) fails or neglects to furnish a return when required by or under this Act;

or

(b) furnishes a return that the Board has reasonable grounds to believe to be defective in any respect,

the Board may make an assessment of the levy payable on the return on the basis of estimates made by the Board.

(2) Where an employer fails to pay a levy required by or under this Act, the Board may make an assessment of the levy payable by the employer.

(3) The Board must, as soon as is reasonably practicable after making an assessment under this section, give written notice of the assessment to the employer to whom the assessment relates.

(4) An employer to whom a notice of an assessment is given under this section must pay the amount of the assessment within 21 days, or such longer period as the notice may allow.

Penalty: \$5 000.

Penalty for late payment

29. (1) Where an employer fails to pay a levy as and when required by or under this Act—

(a) the amount in arrears will be increased by penalty interest at the prescribed rate;

and

(b) the Board may impose on the employer a fine of an amount (not exceeding the prescribed amount) fixed by the Board.

(2) The Board may for any proper reason remit penalty interest or a fine imposed under subsection (1) wholly or in part.

Power to require information, etc.

30. (1) For the purposes of investigating any prescribed matter the Board may, by notice in writing, require any person—

(a) to furnish to the Board, within the time specified in the notice, such information as may be required by the Board;

(b) to produce to the Board, within the time specified in the notice, such books, documents or records as may be required by the Board;

or

(c) to attend for the purpose of giving evidence before the Board at a time and place specified in the notice.

(2) The Board may—

(a) require that information furnished to it in writing be verified by statutory declaration;

and

(b) require that a person attending before it give evidence and, if it thinks fit, give that evidence on oath or by affirmation.

(3) The Board is authorized to administer an oath or to take an affirmation for the purposes of subsection (2).

(4) If a person—

(a) who has been served with a notice to furnish information to the Board, or to produce any books, documents or records to the Board, fails without reasonable excuse to comply with the notice;

(b) who has been served with a notice to attend before the Board fails without reasonable excuse to attend in compliance with the notice;

or

(c) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

the person is guilty of an offence.

Penalty: \$1 000.

(5) A person is not obliged to answer a question under this section if the answer would tend to incriminate that person of an offence, or to produce a book, document or record if it or its contents would tend to incriminate that person of an offence.

(6) In this section—

“prescribed matter” means—

(a) any matter relevant to ascertaining whether a person is liable to make a payment to the Board under this Act, and, if so, the extent of that liability;

and

(b) any other matter prescribed by the regulations.

Recovery of levies

31. A levy payable under this Act (and any penalty interest or fine imposed by the Board) is a debt due to the Board and may be recovered by the Board in a court of competent jurisdiction.

Refund of overpayments

32. If a levy is overpaid, the Board must refund the amount of the overpayment.

PART VI

APPEALS

The Appeals Tribunal

33. (1) The Appeals Tribunal continues in existence.

(2) The Tribunal will be constituted of an industrial magistrate, nominated by the President of the Industrial Court.

Appeals

34. (1) A person who is dissatisfied with a decision of the Board under this Act may, within 30 days after the date of the decision, appeal to the Tribunal.

(2) The Tribunal may, for proper cause, extend the time for making an appeal under this section.

(3) On an appeal under this section, the Tribunal may—

- (a) confirm, vary or quash the decision subject to the appeal;
- (b) substitute its own decision for the decision subject to appeal;
- (c) remit the subject matter of the appeal to the Board for further consideration;
- (d) make any further or other order (including an order as to costs) as the Tribunal thinks necessary or desirable.

Powers of Tribunal

35. (1) The Tribunal may, for the purposes of an appeal—

- (a) by summons, require the attendance before the Tribunal of any person;
 - (b) by summons, require the production of any relevant document, record or material;
 - (c) require any person to make an oath or affirmation truly to answer all questions put by the Tribunal, or any person appearing before the Tribunal;
- and
- (d) require any person appearing before the Tribunal to answer any relevant questions put by the Tribunal, or any person appearing before the Tribunal.

(2) If a person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;
- (b) who has been served with a summons to produce any document, record or material, fails without reasonable excuse to comply with the summons;
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal, or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal,

the person is guilty of an offence.

Penalty: \$2 500.

(3) A person is not obliged to answer a question under this section if the answer would tend to incriminate that person of an offence, or to produce a document, record or material if it or its contents would tend to incriminate that person of an offence.

Practice and procedure

36. The Governor may make regulations relating to the practice and procedure of the Tribunal.

Effect of pending appeal

37. (1) An obligation to pay a levy or a right to recover a levy is not suspended by an appeal.

(2) If the assessment of a levy is altered on an appeal, a due adjustment must be made and, where the assessment is increased, a further amount is payable in accordance with the increase and, where an assessment is decreased, the Board must refund any amount overpaid.

PART VII

MISCELLANEOUS

Reciprocal arrangements with other States and Territories

38. (1) The Minister may make a reciprocal arrangement with the Minister of State of the State or Territory responsible for the administration of a corresponding law, being a reciprocal arrangement relating to—

- (a) long service entitlements for construction workers transferring from this State to that State or Territory or transferring from that State or Territory to this State;
- (b) any incidental or related matters.

(2) The Board—

- (a) will be liable to make contributions to and entitled to recover contributions from, interstate authorities in accordance with a reciprocal arrangement under this section;

and

- (b) will in all other respects be bound by its terms.

Powers of inspection

39. (1) For the purposes of this Act, an inspector may at any reasonable time—

- (a) enter any premises where the inspector has reasonable cause to believe that a worker is employed;
- (b) require an employer to produce any records relating to the service of workers or to long service leave;
- (c) examine and copy or take extracts from such records or require an employer to provide a copy of any such records;
- (d) require any person to answer, to the best of that person's knowledge, information and belief, any question relevant to the administration or enforcement of this Act.

(2) An inspector may, in the exercise of powers under this section—

- (a) be accompanied by such assistants as may be necessary or desirable in the circumstances;
- (b) ask any question through an interpreter.

(3) A person must not—

- (a) hinder or obstruct an inspector or a person assisting an inspector in the exercise of a power under this section;

or

- (b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Penalty: \$5 000.

(4) A person is not required to answer a question under this section if the answer would tend to incriminate that person of an offence.

Records

40. (1) An employer under this Act must keep, or cause to be kept, in the State sufficient records to enable the employer's liability in respect of the payment of levies or other contributions under this Act to be accurately assessed.

Penalty: \$1 000.

(2) A record required under subsection (1) must be kept for at least five years after the completion of the period to which it relates.

Penalty: \$1 000.

(3) Subsections (1) and (2) do not apply—

(a) to a record, or a record of a kind, exempt from the operation of this section by determination of the Board;

or

(b) to a record that the Board has determined need no longer be kept.

(4) A person must not keep a record for the purposes of this Act that the person knows to be false or misleading in a material particular.

Penalty: \$1 000.

Service of documents

41. (1) A notice or other document required or authorized by this Act to be served or given to any person by the Board may be served—

(a) personally;

(b) by leaving the notice or document at an address for service;

(c) by sending the notice or document or a sealed copy of the notice or document by post addressed to the person at an address for service;

or

(d) by such other method as is permitted by any Act.

(2) In any case to which subsection (1)(c) applies, unless the contrary is proved, service of a notice or document will be deemed to have been effected two business days after the date of posting.

(3) In this section—

“address for service”, in relation to a person means—

(a) the person's last known place of residence or business;

or

(b) an address for service as shown on a return furnished by the person under this Act (not being an address superseded by a subsequent address for service shown on a later return):

“business day” means any day except Saturday, Sunday or a public holiday.

Annual report

42. (1) The Board must, on or before the thirtieth day of September in each year, deliver to the Minister a report on the administration and operation of this Act during the financial year that ended on the preceding thirtieth day of June.

(2) The report must incorporate the audited statements of accounts for the Board in relation to the relevant financial year.

(3) The Minister must, within six sitting days after receipt of a report supplied under subsection (1), cause a copy of the report to be laid before each House of Parliament.

Offences

43. (1) Offences against this Act are summary offences.

(2) A prosecution for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed.

(3) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, that person is guilty of a separate and further offence in respect of each day during which the act or omission continues.

Penalty: \$100 for each separate and further offence.

Evidentiary provision

44. (1) In any proceedings under this Act, a certificate purporting to be under the seal of the Board certifying that—

(a) the person named in the certificate was at the time or during the period specified in the certificate an employer;

(b) the employer named in the certificate was liable to pay a contribution in respect of the period specified in the certificate;

(c) an assessment of the remuneration paid by an employer during a particular period has been duly made;

(d) the particulars of the assessment are as stated in the certificate;

(e) notice of an assessment has been served on an employer;

or

(f) the amount specified in the certificate was at the date of the certificate payable by the employer named in the certificate,

will, in the absence of evidence to the contrary, be proof of the matters stated in the certificate.

(2) In any proceedings against a person for failing to furnish a return under this Act, a certificate purporting to be under the seal of the Board certifying that the return was not received before the expiration of the period within which it was required to be furnished will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the return.

(3) In any proceedings against a person for failing to furnish the Board with information required by the Board under this Act, a certificate purporting to be under the seal of the Board certifying that—

(a) the defendant was required to furnish the Board with the information of the nature specified in the certificate within the period specified in the certificate;

and

(b) the defendant failed duly to furnish the information as and when required by the Board,

will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the information.

Expiation of offences

45. (1) An offence against any of the following sections is expiable—

Section 19

Section 27.

(2) Where it is alleged that a person has committed an expiable offence, the Board may cause to be served personally or by post on that person a notice to the effect that he or she may expiate the offence by payment to the Board of the expiation fee specified in the notice within 60 days of the date of the notice and, if the offence is so expiated, no proceedings will be commenced in a court with respect to the alleged offence.

(3) The expiation fee payable in respect of an expiable offence is as follows:

Section 19—\$100

Section 27—\$250.

Regulations

46. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) require employers to register with the Board;

(b) require employers or former employers to notify the Board of specified matters;

and

(c) prescribe penalties, not exceeding \$1 000, for breach of, or non-compliance with, the regulations.

FIRST SCHEDULE
CONSTRUCTION WORKERS AWARDS*State*

Building and Construction Workers (State) Award
Building Trades (South Australia) Construction Award
Carpenters and Joiners (General) Award
Electrical Contracting Industry (South Australia) Award
Metal Industry (South Australia) Award
Plumbers and Gasfitters (South Australia) Award Part 1 On Site Construction
Stone Masons and Monumental Workers Award

Federal

Carpenters and Joiners Award
Electrical Contracting Industry Award 1988 Part 2
Glass Merchants and Glazing Contractors (South Australia) Award
National Building Trades Construction Award
National Metal and Engineering On-Site Construction Industry Award
Plumbers and Gasfitters (Southern States) Construction Agreement
Sprinkler Pipe-Fitters Award

SECOND SCHEDULE

EFFECTIVE SERVICE ENTITLEMENT—ELECTRICAL OR METAL TRADES

Interpretation

1. In this schedule—

“the 1990 Act” means the *Long Service Leave (Building Industry) Act Amendment Act, 1990*;

“the prescribed period” means the period of seven years immediately preceding the commencement of the 1990 Act.

Application of schedule

2. This schedule applies to a person who becomes a construction worker on the commencement of the 1990 Act by virtue of the application of this Act to persons employed in the electrical and metal trades industry.

Crediting of effective service entitlement

3. (1) A person to whom this schedule applies is, on the commencement of the 1990 Act, in respect of service in the electrical and metal trades industry before that commencement, entitled to be credited with an effective service entitlement calculated on the basis that—

(a) any service that occurred during the prescribed period;

and

(b) in the case of a person who was continuously employed by the same employer over the whole of the prescribed period—any service with that employer over a continuous period up to the commencement of the prescribed period,

will give rise to an effective service entitlement equal to two-thirds of the effective service entitlement that would accrue under this Act in respect of comparable service in the building industry.

(2) Subsection (1) is subject to the following qualifications:

(a) a person will not be credited with an entitlement for any service for which he or she has taken long service leave, or received a payment on account of long service leave, under an award or agreement in force before the commencement of the 1990 Act;

and

(b) if, immediately before the commencement of the 1990 Act, the person had an entitlement to long service leave (or an entitlement to receive a payment on account of long service leave) under an award or agreement by virtue of completing 15 years (or more) service with the same employer, the person will not be credited with an entitlement under this Act in respect of that service.

THIRD SCHEDULE

AWARDS RELEVANT TO SPECIAL LEVY

Electrical Contracting Industry Award 1988 Part 2

National Metal and Engineering On-Site Construction Industry Award

APPENDIX

Legislative History

The Long Service Leave (Building Industry) Act Amendment Act, 1990, provides for a transitional provision *see* s. 32.

Section 1:	substituted by 35, 1990, s. 3
Section 4(1):	definition of "allowable absence" amended by 35, 1990, s. 4(a) definition of "the Board" substituted by 35, 1990, s. 5(a) definition of "building work" amended by 35, 1990, s. 5(b) definition of "construction industry" inserted by 35, 1990, s. 5(c) definition of "construction work" inserted by 35, 1990, s. 5(c) definition of "building worker" repealed and definition of "construction worker" inserted in its place by 35, 1990, s. 5(c) definition of "contribution" repealed by 35, 1990, s. 5(d) definition of "effective service" amended by 35, 1990, s. 4(a) definition of "the electrical and metal trades industry" inserted by 35, 1990, s. 5(e) definition of "electrical or metal trades work" inserted by 35, 1990, s. 5(e) definition of "employer" amended by 35, 1990, s. 4(a) definition of "the Fund" repealed and definition of "the Funds" inserted in its place by 35, 1990, s. 5(f) definition of "ordinary hours" amended by 35, 1990, s. 4(a) definition of "ordinary weekly pay" amended by 35, 1990, s. 4(a) definition of "prescribed percentage" repealed by 35, 1990, s. 5(g) definition of "working day" repealed by 35, 1990, s. 5(h)
Section 5(1):	substituted by 35, 1990, s. 6(a)
Section 5(3):	substituted by 35, 1990, s. 6(b)
Heading preceding section 6:	substituted by 35, 1990, s. 7
Section 6(1):	substituted by 35, 1990, s. 8
Section 7(1):	substituted by 35, 1990, s. 9
Section 8(2):	substituted by 35, 1990, s. 10
Section 10(3):	amended by 35, 1990, s. 11(a)
Section 10(4):	amended by 35, 1990, s. 11(b)
Section 14(1):	amended by 35, 1990, s. 4(b)
Section 14(2) - (4):	amended by 35, 1990, s. 4(a)
Section 15(1) - (4):	amended by 35, 1990, s. 4(a)
Section 16(1) and (2):	amended by 35, 1990, s. 4(a)
Section 16(3):	amended by 35, 1990, s. 4(a), (b)
Section 16(4):	amended by 35, 1990, s. 4(a)
Section 17(1):	amended by 35, 1990, s. 4(a)
Section 18(1):	amended by 35, 1990, ss. 4(a), 12(a)
Section 18(2):	amended by 35, 1990, ss. 4(a), 12(b)
Section 19:	amended by 35, 1990, s. 4(a)
Section 20:	substituted by 35, 1990, s. 13
Sections 20a - 20c:	inserted by 35, 1990, s. 13
Section 21(1):	amended by 35, 1990, s. 14
Section 22(1):	amended by 35, 1990, s. 15
Section 23(1):	amended by 35, 1990, s. 16
Section 24(1):	amended by 35, 1990, s. 17(a)
Section 24(3):	amended by 35, 1990, s. 17(b)
Heading preceding section 26:	substituted by 35, 1990, s. 18
Section 26:	substituted by 35, 1990, s. 19
Section 27(1) and (2):	substituted by 35, 1990, s. 20(a)
Section 27(5):	amended by 35, 1990, s. 20(b)
Section 28(1) and (2):	amended by 35, 1990, s. 21
Section 29(1):	amended by 35, 1990, s. 22
Section 31:	amended by 35, 1990, s. 23
Section 32:	amended by 35, 1990, s. 24
Section 37:	amended by 35, 1990, s. 25
Section 38(1):	amended by 35, 1990, s. 4(c)
Section 40(1):	amended by 35, 1990, s. 26
Section 44(1):	amended by 35, 1990, s. 27
Section 45(1):	amended by 35, 1990, s. 28(a)
Section 45(3):	amended by 35, 1990, s. 28(b)
First schedule:	substituted by 35, 1990, s. 29
Second schedule:	substituted by 35, 1990, s. 30
Third schedule:	substituted by 72, 1989, s. 3; 35, 1990, s. 31