

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 24 July 1997.

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 1 PRELIMINARY

1. Short title
2. Commencement
3. Repeal
4. Interpretation
- 4A. Determination of ordinary weekly pay in certain circumstances
5. Application of this Act

PART 2 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 3 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. Cessation of employment
18. Preservation of entitlements in certain cases
19. Employment during leave

PART 4 FUNDING

20. The Construction Industry Fund
- 20C. Exemption from taxes and charges
21. Investment of the Fund
22. Loans for training purposes
23. Borrowing by the Board
24. Investigation of the Fund
25. Accounts and audit

PART 5 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 6 APPEALS

33. The Appeals Tribunal
34. Appeals

-
- 35. Powers of Tribunal
 - 36. Practice and procedure
 - 37. Effect of pending appeal

**PART 7
MISCELLANEOUS**

- 37A. Self-employed contractors
- 38. Reciprocal arrangements with other States and Territories
- 38A. Exemptions for certain interstate employers
- 38B. Inspectors
- 39. Powers of inspection
- 40. Records
- 41. Service of documents
- 42. Annual report
- 43. Offences
- 44. Evidentiary provision
- 45. Expiation fees
- 46. Regulations

SCHEDULE 1
Construction Workers Awards

SCHEDULE 1A
Optional Coverage

SCHEDULE 2
Effective Service Entitlement—Electrical or Metal Trades

SCHEDULE 3
Preservation and Conversion of Entitlements—1995 Act

SCHEDULE 4
Transitional Provisions—1975 Act

**APPENDIX
LEGISLATIVE HISTORY**

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

Statutes Amendment (Public Actuary) Act 1992 No. 69 of 1992 [Assented to 19 November 1992]⁴

Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1992 No. 80 of 1992 [Assented to 3 December 1992]⁵

Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October 1993]⁶

Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1995 No. 40 of 1995 [Assented to 4 May 1995]⁷

Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]⁸

Construction Industry Long Service Leave (Transitional Provisions) Amendment Act 1997 No. 44 of 1997 [Assented to 24 July 1997]

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

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

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

⁴ Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.

⁵ Came into operation 1 January 1993: *Gaz.* 10 December 1992, p. 1754.

⁶ Came into operation 1 January 1994: s. 2.

⁷ Came into operation 1 July 1995: *Gaz.* 15 June 1995, p. 2840.

⁸ Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act 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 1
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—

"**actuary**" means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

"**agreement**" means—

- (a) an enterprise agreement or industrial agreement in force under the *Industrial and Employee Relations Act 1994*; or
- (b) a certified agreement or an enterprise flexibility agreement in force under the *Industrial Relations Act 1988* of the Commonwealth;

"**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;

"**apprentice**" includes a trainee under a contract of training for a trade;

"**award**" includes—

- (a) an award or order of the Industrial Relations Commission of South Australia;
- (b) an award or order of the Australian Industrial Relations 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;

Construction Industry Long Service Leave Act 1987

"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 worker" means a person to whose employment this Act applies (*see section 5*) and includes a former construction worker;

"contract of service" includes a contract of training for a trade;

"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 on site work that involves—

- (a) electrical or metal work associated with—
 - (i) the construction or erection of a building or structure that is to be fixed to the ground and wholly or partially constructed on site; or
 - (ii) the alteration or demolition of a building or structure; or
- (b) the construction, erection, installation, extension, alteration or dismantling of—
 - (i) a transmission or distribution line, or plant, plant facility or equipment used in connection with the supply of electricity; or
 - (ii) an air-conditioning, ventilation or refrigeration system; or
- (c) the construction, erection, installation, extension, alteration, servicing, repairing, replacing of parts or dismantling of a lift or escalator; or
- (d) electrical or metal work associated with other engineering projects (whether or not within the ambit of a preceding paragraph);

"employer" means a person by whom a construction worker is employed;

"the Fund" means the *Construction Industry Fund* referred to in Part 4;

"**inspector**" means a person appointed as an inspector under this Act;

"**levy**" includes any amount assessed by the Board under section 28;

"**ordinary weekly pay**"—*see subsection (3)*;

"**the relevant date**" means the date as at which a person's ordinary weekly pay is to be determined;

"**the repealed Act**" means the *Long Service Leave (Building Industry) Act 1975* repealed by this Act;

"**return period**" means a return period under section 27(1);

"**special rates or allowances**" means—

- (a) remuneration categorised by an award or agreement as special rates or allowances;
- (b) remuneration categorised 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, a person will be taken to have worked for a day if (and only if) the person spends five or more consecutive hours engaged in employment to which this Act applies (and then each such period of five or more consecutive hours will be taken to be a "day" under this Act).

(3) Subject to this Act, a person's ordinary weekly pay will be—

- (a) if at the relevant date the person is being paid under an award for work in the construction industry—the weekly base rate of pay for ordinary hours prescribed by the award for work of the kind performed by the person as a construction worker at the relevant date;
- (b) in any other case—an amount determined by averaging the person's weekly earnings as a construction worker over the period of 52 weeks immediately preceding the relevant date,

subject to the following qualifications:

- (c) a week in which the person did not act as a construction worker must be disregarded for the purposes of paragraph (b); and
- (d) the regulations may—
 - (i) declare payments made to or for the benefit of a construction worker that must be included for the purposes of any determination or calculation under this subsection; and
 - (ii) declare payments made to or for the benefit of a construction worker that must be excluded for the purposes of any determination or calculation under this subsection; and
- (e) if the person has not been a construction worker at all during the period of 52 weeks immediately preceding the relevant date, the person's ordinary weekly pay will be taken to be an amount that represents the average ordinary weekly pay that was applicable under this Act for all persons engaged in the kind of work last performed by the person as a construction worker who took leave or received an entitlement in the financial year immediately preceding the relevant date.

(4) Unless otherwise specified, ordinary weekly pay will be determined as at the end of the last completed return period under this Act.

Determination of ordinary weekly pay in certain circumstances

4A. (1) If at any time it appears to the Board that a construction worker's ordinary weekly pay calculated in accordance with this Act is—

- (a) excessive; or
- (b) insufficient,

by reason of—

- (c) the nature of the work performed by the construction worker at any time material to the calculation; or
- (d) the remuneration that was payable to the construction worker in respect of any work performed by him or her at any time material to the calculation,

the Board may, by notice in writing to the construction worker and the construction worker's employer (if any), inform the construction worker (or his or her personal representative) and the employer that the Board proposes to determine the construction worker's ordinary weekly pay under this Act to be a different amount.

(2) A notice under subsection (1) must specify a time within which the construction worker (or his or her representative) and the employer may make written submissions to the Board that the construction worker's ordinary weekly pay should be an amount different to the amount proposed by the Board.

(3) In making a determination under this section the Board must take into account any written submission received within the time specified under subsection (2) and may otherwise inform itself in such manner as it thinks fit, but except as provided by this section the Board is not required to give to any person notice of or an opportunity to answer or to be heard in relation to any matter taken into account by the Board in making the determination.

(4) The Board must cause notice of its determination to be served on the construction worker (or his or her personal representative) and on the construction worker's employer (if any).

(5) The notice must include a statement of the grounds upon which the determination has been made.

(6) If the Board makes a determination of a construction worker's ordinary weekly pay under this section, that determination will prevail over any amount that would otherwise constitute the construction worker's ordinary weekly pay under this Act.

Application of this Act

5. (1aa) Subject to this section, this Act applies to a person's employment if the person is within the ambit of subsections (1), (1a) or (1b).

(1) A person is within the ambit of this subsection if—

(a) the person works under a contract of service in the construction industry; and

(b) —

(i) an award referred to in the schedule 1 or the regulations prescribes a weekly rate of pay for work of that kind; or

(ii) the person works on site as a foreman and within 12 months before commencing work as a foreman the person worked in some other capacity as a construction worker under an award referred to in the schedule 1 or the regulations; and

(c) —

(i) 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—

(A) the whole period of employment; or

(B) the first month of employment; or

(C) any three—month period of employment; or

(ii) in the case of a foreman, the on site employment involves supervising other employees who work on the site,

but without affecting any accrued effective service entitlement, this subsection ceases to apply to the employment if the employee has not worked on site for the last three months or, in the case of a foreman, has not gone on site in the performance of his or her functions as a foreman for the last three months (disregarding any period during which the employee is absent from work as a result of an allowable absence).

(1a) A person is within the ambit of this subsection if—

(a) the person works under a contract of service in the construction industry; and

(b) an award referred to in schedule 1A, or the regulations, prescribe a weekly rate of pay for work of that kind (subject to any limitation as to classifications referred to in that schedule or the regulations); and

Construction Industry Long Service Leave Act 1987

(c) the person's employer has registered with the Board as an employer for the purposes of this Act; and

(d) the person's employer and the Board have agreed that the Act should apply to the person.

(1b) A person is within the ambit of this subsection if—

(a) the person has been employed as a construction worker within the ambit of subsections (1) or (1a); and

(b) the person is seconded to a relevant association to act as an officer or employee of the association after being granted leave without pay by an employer in the construction industry; and

(c) the relevant association is registered with the Board for the purposes of this provision; and

(d) the person is not (and does not become) a member of the governing body of the relevant association,

but without affecting an accrued effective service entitlement, this subsection ceases to apply to the person if the person attains an effective service entitlement of 2 600 days.

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

(2a) Where this Act applies to employment by virtue of subsection (1b), the relevant association will be taken to be the employer of the person (as a construction worker) for the purposes of this Act.

(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.

(6) In this section—

"relevant association" means an association of employees that is able to represent the industrial interests of persons employed in the construction industry.

Construction Industry Long Service Leave Act 1987

PART 2

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.
- (5) The Board is subject to direction by the Minister.
- (6) A direction given by the Minister under subsection (5) must be in writing.
- (7) The Board must cause a direction given by the Minister to be published in its next annual report.

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; and
- (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; or
- (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; or

(b) the member's term of office expires; or

(c) the member resigns by written notice addressed to the Minister; or

(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.

Construction Industry Long Service Leave Act 1987

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; and
- (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 3
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) A person will be credited with one day of effective service for each day that he or she works as a construction worker (and the aggregate of those days of effective service will be the worker's aggregate effective service entitlement).

(2a) However, a person cannot be credited with more than five days of effective service in any week (and accordingly cannot be credited with more than 260 days of effective service in a financial year).

(3) Where—

- (a) a construction worker who has an effective service entitlement of less than 2 600 days 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 1 820 days; and
- (b) the construction worker—
 - (i) has not previously had an effective service entitlement of 2 600 days 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 as a construction worker within the meaning of this Act or as a building worker within the meaning of the repealed Act; or
 - (iii) has not received long service leave, or a payment on account of long service leave by virtue of completing 15 years (or more) service with the same employer, under the *Metal Industry (Long Service Leave) Award 1984* (or an agreement that applied to the exclusion of that award) for service as a construction worker within the meaning of this Act; 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) or where the construction worker continues to be employed by an employer within the construction industry).

Construction Industry Long Service Leave Act 1987

(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) If a person employed as a construction worker commences work in a different 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* (on the basis that five days of effective service under this Act is equivalent to seven days of service under the other Act) (and an effective service so credited will then be cancelled under this Act).

(2) If a person employed in a 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 calculated in accordance with the *Long Service Leave Act 1987* up to the point of change in the nature of employment will be credited as effective service for the purposes of this Act (on the basis that seven days of service under the other Act is equivalent to five days of effective service under this Act).

(3) If—

- (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:

$$A = \frac{OWP \times D \times 1.3}{260}$$

where—

A is the amount payable

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

D is the effective service entitlement of the person as a construction worker under this Act (expressed in days).

(4) If—

- (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:

$$A = \frac{OWP \times D \times 1.3}{365}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under this Act

D 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 days).

Long service leave entitlement

16. (1) Subject to this Act, a construction worker who has an effective service entitlement of 2 600 days 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) Notwithstanding subsection (2), an employer and a construction worker may agree that the construction worker take leave in separate periods subject to the following qualifications:

- (a) a construction worker's first long service leave entitlement cannot be taken in more than three separate periods; and
- (b) each such period must be constituted by whole weeks of leave and be of at least two weeks duration; and
- (c) any subsequent period of long service leave to which the construction worker becomes entitled must be taken in periods of at least two weeks duration.

(4) Where—

- (a) a construction worker takes long service leave; or
- (b) the construction worker's employment by the employer referred to in subsection (2) comes to an end before he or she takes accrued long service leave and the worker, in a manner and form approved by the Board, makes an election under this provision,

the Board must pay to the person an amount calculated by multiplying his or her ordinary weekly pay by the period of leave referred to in paragraph (a) or (b) (as the case may be).

* * * * *

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

Construction Industry Long Service Leave Act 1987

Cessation of employment

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 1 820 days or more (but less than 2 600 days); or
- (ii) a construction worker has attained an effective service entitlement of less than 1 820 days and—
 - has previously had an effective service entitlement of 2 600 days 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 as a construction worker within the meaning of this Act or as a building worker within the meaning of the repealed Act; or
 - has received long service leave, or a payment on account of long service leave by virtue of completing 15 years (or more) service with the same employer, under the *Metal Industry (Long Service Leave) Award 1984* (or an agreement that applied to the exclusion of that award) for service as a construction worker within the meaning of this Act; or
- (iii) a construction worker has attained an effective service entitlement of 2 600 days but has not taken all of the long service leave to which he or she is entitled; and

(b) the construction worker has—

- (i) died; or

* * * * *

- (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:

$$A = \frac{OWP \times D \times 1.3}{260}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under this Act as at—

- if the worker has died—the day of death;

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

D is the effective service entitlement (expressed in days).

(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) If—

- (a) a person who has an effective service entitlement ceases to be employed as a construction worker; and
- (b) the person is not entitled to long service leave or a payment for *pro rata* long service leave; and
- (c) the person commences work as a supervisor 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 supervisor to the Board in accordance with the regulations within six months after the person commences work as a supervisor in the construction industry (or within such longer period as the Board may, in its absolute discretion, allow),

the effective service entitlement is preserved.

(2) If 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 supervisor) totals 1 820 working days or more, the Board must pay to the person (or his or her personal representative) an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under this Act

D is the effective service entitlement preserved under subsection (1) (expressed in days).

(3) In this section—

"**supervisor**" means a person (other than a person within the ambit of section 5(1)) who is responsible for the daily on site supervision of works.

Construction Industry Long Service Leave Act 1987

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.

Expiation fee: \$100.

(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 4
FUNDING**

The Construction Industry Fund

20. (1) The Construction Industry Fund and the Electrical and Metal Trades Fund are combined and continue 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 Construction Industry Fund and the Electrical and Metal Trades Fund immediately before the commencement of this section; and
- (b) levies received by the Board from employers; and
- (c) income and accretions produced by the investment of money from the Fund; and
- (d) money advanced to the Board for the purposes of the Fund; and
- (e) penalties and fines recovered by the Board under this Act; and
- (f) other money payable to the Fund under this Act.

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

- (a) any long service leave benefits that the Board is liable to pay under this Act; and
- (b) the costs incurred by the Board in performing its functions under this Act; and
- (c) other money authorised to be paid from the Fund under this Act.

* * * * *

* * * * *

Exemption from taxes and charges

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

Investment of the Fund

21. (1) The Board may invest money that is not immediately required for the purposes of the Fund.

(2) The Board must, when investing the money, take into account policies and guidelines (if any) determined by the Treasurer after consultation with the Minister.

Loans for training purposes

22. (1) The Board may, with the approval of the Minister and the Treasurer, lend money from the Fund 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.

Construction Industry Long Service Leave Act 1987

Borrowing by the Board

23. (1) The Board may, for the purposes of the Fund, 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 Fund

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

(2) An investigation under this section will be carried out by an actuary appointed for the purpose by the Board.

(3) The actuary carrying out an investigation under this section 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 Fund.

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

(4a) The Board must forward with the report such recommendations as the Board thinks fit relating to whether the rates of contribution to the Fund should be reduced, increased, or left unaltered.

(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 Board must cause its accounts to be audited at least once each year by a registered company auditor or the Auditor-General.

(3) The Auditor-General may at any time audit the accounts of the Board.

**PART 5
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 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) a construction worker who is employed by the employer for less than three days in a month; or
- (b) subject to an exception prescribed by the regulations—an apprentice.

* * * * *

(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.

(7) For the purposes of this section, if an employer pays a construction worker at a rate that exceeds the rate that applies to the construction worker under this Act for the purpose of determining his or her ordinary weekly pay, the amount of the excess may be disregarded for the purpose of calculating the remuneration paid by the employer.

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

Construction Industry Long Service Leave Act 1987

(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 comply with a requirement imposed under this section; or

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

the employer is guilty of an offence.

Penalty: \$5 000.

Expiation fee: \$250.

(6) An employer who is registered with the Board but who does not employ any construction workers in a particular return period will nevertheless be taken to be an employer in the construction industry for the purposes of this section.

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 furnish a return or to pay a levy as and when required by or under this Act—

(a) the amount of any levy 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; or
- (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 authorised 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; or
- (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.

Construction Industry Long Service Leave Act 1987

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 6
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 Senior Judge of the Industrial Relations Court of South Australia.

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

Construction Industry Long Service Leave Act 1987

- (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 7
MISCELLANEOUS**

Self-employed contractors

37A. (1) A self-employed contractor in the construction industry may, on application to the Board in a form approved by the Board, be registered as a self-employed contractor under this section.¹

¹ A person registered as a self-employed contractor will be called a "registered contractor" for the purposes of this section.

(2) A registered contractor is eligible to participate in an investment scheme established by the Board for the purposes of this section.

(3) If—

- (a) a registered contractor had previously been a construction worker; and
- (b) the registered contractor was not entitled to long service leave or a payment for *pro rata* long service leave when he or she ceased work as a construction worker; and
- (c) the registered contractor commenced 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 application for registration was made within six months after commencing work as a self-employed contractor in the construction industry (or within such longer period as the Board may, in its absolute discretion, allow),

any effective service entitlement is preserved on registration.

(4) The following provisions apply to the investment scheme established by the Board for the purposes of this section:

- (a) the Board will, for the purposes of the scheme, before the commencement of each financial year—
 - (i) set a contribution rate; and
 - (ii) set an interest rate,for the financial year; and
- (b) a registered contractor may then, in respect of each (or any) period prescribed by the regulations, pay to the Board an amount equal to the relevant contribution rate (and a payment may be made by a registered contractor in advance or, with the approval of the Board, in arrears); and
- (c) the registered contractor will then, in accordance with a scheme prescribed by the regulations (but subject to this section), be credited by the Board with—
 - (i) the prescribed number of days of effective service entitlements; and
 - (ii) the amount of the payment; and

Construction Industry Long Service Leave Act 1987

(iii) interest in accordance with the rate set under paragraph (a)(ii).

(5) A payment under subsection (4)(b) must be accompanied by a return in a form approved by the Board containing information as may be prescribed or required by the Board.

(6) A registered contractor who attains an effective service entitlement of 2 600 days (including any effective service entitlement preserved under subsection (3)) is entitled to an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260} + CI$$

where—

A is the amount payable

OWP is the registered contractor's ordinary weekly pay applicable under this Act (applying any presumption prescribed by the regulations)

D is the effective service entitlement preserved under subsection (3) (or, if no such entitlement is preserved, zero)

CI is the total of the registered contractor's entitlement credited under subsection (4)(c)(ii) and (iii).

(7) If, on application to the Board under this subsection in a form approved by the Board, the Board is satisfied that—

(a) —

(i) a registered contractor has attained an effective service entitlement of 1 820 days (including any effective service entitlement preserved under subsection (3)); or

(ii) a registered contractor has attained an effective service entitlement of less than 1 820 days and has previously had an effective service entitlement of 2 600 days or more; and

(b) the registered contractor has—

(i) died; or

(ii) ceased to work in the construction industry because of physical or mental disability that will prevent him or her from working in the construction industry in the future, or because of some other significant pressing necessity; or

(iii) retired from his or her work and does not intend to work in the future,

the Board must pay to the registered contractor (or his or her personal representative) an amount calculated in the same manner as under subsection (6).

(8) If—

(a) on application to the Board under this subsection in a form approved by the Board, the Board is satisfied that a registered contractor has ceased work in the construction industry; and

(b) the registered contractor does not have an entitlement under subsection (6) or (7),

the Board must pay to the registered contractor an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{260} + C$$

where—

A is the amount payable

OWP is the registered contractor's ordinary weekly pay applicable under this Act (applying any presumption prescribed by the regulations)

D is any effective service entitlement preserved under subsection (3), subject to the qualification that if the aggregate of the registered contractor's effective service entitlement preserved under subsection (3) and the registered contractor's effective service entitlement credited under subsection (4)(c)(i) does not equal or exceed 1 820 days, then D will be taken to be zero

C is the total of the registered contractor's entitlement credited under subsection (4)(c)(ii) (without interest).

(9) If the Board rejects an application under this section, 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).

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.

Exemptions for certain interstate employers

38A. (1) An employer—

(a) who is domiciled outside the State and involved in the construction industry in the State; or

Construction Industry Long Service Leave Act 1987

(b) who is domiciled in the State and involved in the construction industry outside the State, may, in a manner and form determined by the Board, apply to the Board to be exempted from the requirement to be registered and pay a levy under this Act in respect of any construction worker, or class of construction workers, employed by the employer.

(2) If the Board is satisfied that any construction worker, or class of construction workers, affected by an application under this section is in the performance of construction work covered by an appropriate long service leave scheme established under a corresponding law, the Board may grant the application.

(3) The Board may, at any time by notice in writing to the relevant employer, revoke an exemption under this section.

Inspectors

38B. (1) The Minister may appoint such inspectors as the Minister thinks fit for the purposes of this Act.

(2) Each inspector appointed by the Minister must be furnished with an appropriate identity card.

(3) An inspector must produce the identity card for inspection by any person who questions his or her authority to exercise the powers of an inspector under this Act.

(4) The Minister may, by notice in writing served on an inspector, revoke the appointment of the inspector under this Act.

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 authorised by this Act to be served or given to any person by the Board may be served—

(a) personally; or

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

(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.

Construction Industry Long Service Leave Act 1987

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 or, with the authorisation of the Attorney-General, at any later time within six years after the date on which the offence is alleged to have been committed.

(2a) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(3) Where, in proceedings for an offence against this Act, the court finds that the defendant has contravened, or failed to comply with, this Act, the court may, in addition to any penalty that it may impose—

- (a) order the defendant to take specified action to make good the contravention or default in a manner, and within a period, specified by the court;
- (b) order the defendant to furnish or make available to the Board, within a period specified by the court, such information or records as the Board may reasonably require for the purposes of this Act.

(4) A person to whom an order is given under subsection (3) who fails to comply with the order within the time specified in the order, or such further time as the court, on application, allows, is guilty of an offence.

Penalty: \$5 000.

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; or
- (b) the employer named in the certificate was liable to pay a contribution in respect of the period specified in the certificate; or
- (c) an assessment of the remuneration paid by an employer during a particular period has been duly made; or
- (d) the particulars of the assessment are as stated in the certificate; or

- (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 fees

45. Any amount paid to or recovered by the Board for the expiation of offences against this Act must be credited to the Construction Industry Fund or the Electrical and Metal Trades Fund.

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; and
 - (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; and
 - (d) fix expiation fees for alleged offences against the regulations.

Construction Industry Long Service Leave Act 1987

SCHEDULE 1

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 and Construction Industry Award
National Metal and Engineering On-Site Construction Industry Award
Plumbers and Gasfitters (Southern States) Construction Agreement
Sprinkler Pipe-Fitters Award

SCHEDULE 1A
Optional Coverage

Award—General Application

Fibrous Plasterers (Factory) Award

Award—Limited Application

The National Joinery and Building Trades Product Award 1993, but only in relation to the following classifications and only in the terrazzo or concrete casting industries:

Carpenter
Joiner
Carpenter and Joiner
Tradesperson
Machinist
Terrazzo Assistant
Factory Hand
Adult Trainee—Terrazzo Worker first six months.

Construction Industry Long Service Leave Act 1987

SCHEDULE 2

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.

SCHEDULE 3

Preservation and Conversion of Entitlements—1995 Act

Interpretation

1. In this schedule—

"1995 Act" means the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1995*.

Conversion of entitlements

2. If a person has an effective service entitlement immediately before the commencement of the 1995 Act, then—

(a) the effective service entitlement will, on the commencement of the 1995 Act, be converted to an effective service entitlement expressed in days in accordance with the following formula:

$$E = \frac{EM \times 260}{12}$$

where—

E is the effective service entitlement (expressed in whole days rounded up to the next day)

EM is the person's aggregate effective service entitlement under this Act immediately before the commencement of the 1995 Act (expressed in months);

(b) when leave is taken after the commencement of the 1995 Act, it will be taken that the person is first taking leave attributable to an effective service entitlement accrued before the commencement of the 1995 Act (as converted under paragraph (a)) (until that entitlement is expended); and

(c) despite any other provision of this Act, insofar as a person is taking leave that is attributable to an effective service entitlement accrued before the commencement of the 1995 Act, the person's ordinary weekly pay in respect of that leave will be taken to be an amount determined as if the 1995 Act had not been enacted.

Continuity of application

3. If—

(a) a person was, immediately before the commencement of the 1995 Act—

(i) in employment that qualified the person as a construction worker under this Act; and

(ii) registered with the Board; and

(b) this Act would, but for this subsection, cease to apply to work in that form of employment on the commencement of the 1995 Act,

then this Act will, despite the enactment of the 1995 Act (and without limiting the application of this Act to a person who subsequently works as a construction worker in any other form of employment), continue to apply to the person while he or she remains in that form of employment with the same employer (as if the person continued to be a construction worker within the meaning of this Act).

Special rates—Self-employed contractors

4. The Board may, on the commencement of the 1995 Act, for the purposes of section 37A of this Act—

(a) set a contribution rate; and

(b) set an interest rate,

for the 1994/1995 financial year (despite the commencement of that financial year).

Construction Industry Long Service Leave Act 1987

SCHEDULE 4

Transitional Provisions—1975 Act

Interpretation

1. In this schedule—

"**1987 transitional provisions**" means the provisions that constituted the third schedule of this Act at the time that this Act came into operation (1 April 1988).

Effective service entitlements not previously recognised

2. The Board may, on its own initiative or on application under this schedule, credit to a person under this Act any effective service entitlement that accrued to the person under the repealed Act in respect of any period of service occurring after the commencement of that Act (and that has not been previously credited to the person under this Act).

Employer contributions

3. (1) If—

- (a) a person is credited with an effective service entitlement under the 1987 transitional provisions or under this schedule; and
- (b) contributions have not been paid by the person who was the employer in respect of the period of service to which the entitlement relates,

the Board is entitled to recover from the person referred to in paragraph (b), in respect of any period of service occurring after the commencement of the repealed Act, an amount assessed or estimated by the Board as being equal to the total contributions that would have been payable by the person as an employer under the repealed Act in respect of that period of service, together with interest on each such contribution at a rate equal to the rate that applies under section 29(1)(a) for each full financial year from the date on which the contribution would have been so payable.

(2) An amount that the Board is entitled to recover from a person under subclause (1) will be taken to be unpaid levy assessed by the Board as being payable by the person as an employer under section 28(2) (and may be recovered by the Board as such).

(3) The Board may—

- (a) allow an amount payable under subclause (1) to be paid by instalments over a period not exceeding 12 months;
- (b) for any proper reason remit interest payable under subclause (1) wholly or in part.

Leave previously granted

4. Long service leave granted, or a payment made on account of long service leave, before the commencement of this Act will, in respect of the period or entitlement to which it related, be presumed to have been granted or made under this Act.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

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

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 1:	substituted by 35, 1990, s. 3
Section 4(1):	definition of "actuary" inserted by 69, 1992, s. 15
	definition of "agreement" substituted by 80, 1992, s. 3(a); 40, 1995, s. 3(a)
	definition of "allowable absence" amended by 35, 1990, s. 4(a)
	definition of "apprentice" inserted by 40, 1995, s. 3(b)
	definition of "award" substituted by 80, 1992, s. 3(b); amended by 40, 1995, s. 3(c)
	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); amended by 80, 1992, s. 3(c); repealed by 40, 1995, s. 3(d)
	definition of "building worker" repealed and definition of "construction worker" inserted in its place by 35, 1990, s. 5(c)
	definition of "contract of service" substituted by 40, 1995, s. 3(e)
	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); substituted by 40, 1995, s. 3(f)
	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); repealed and definition of "the Fund" inserted in its place by 40, 1995, s. 3(g)
	definition of "inspector" substituted by 80, 1992, s. 3(d)
	definition of "levy" inserted by 80, 1992, s. 3(d)
	definition of "ordinary hours" amended by 35, 1990, s. 4(a); 80, 1992, s. 3(e); repealed by 40, 1995, s. 3(h)
	definition of "ordinary weekly pay" amended by 35, 1990, s. 4(a); substituted by 80, 1992, s. 3(f)
	definition of "prescribed percentage" repealed by 35, 1990, s. 5(g)
	definition of "the relevant date" inserted by 80, 1992, s. 3(f)
	definition of "return period" inserted by 40, 1995, s. 3(i)
	definition of "working day" repealed by 35, 1990, s. 5(h)
Section 4(2):	substituted by 40, 1995, s. 3(j)
Section 4(3):	inserted by 80, 1992, s. 3(g); substituted by 40, 1995, s. 3(j)
Section 4(4):	inserted by 40, 1995, s. 3(j)
Section 4A:	inserted by 80, 1992, s. 4

Construction Industry Long Service Leave Act 1987

Section 5(1aa):	inserted by 40, 1995, s. 4(a)
Section 5(1):	substituted by 35, 1990, s. 6(a); 80, 1992, s. 5(a); amended by 40, 1995, s. 4(b)-(d)
Section 5(1a) and (1b):	inserted by 40, 1995, s. 4(e)
Section 5(2):	amended by 80, 1992, s. 5(b)
Section 5(2a):	inserted by 40, 1995, s. 4(f)
Section 5(3):	substituted by 35, 1990, s. 6(b)
Section 5(6):	inserted by 40, 1995, s. 4(g)
Heading preceding section 6:	substituted by 35, 1990, s. 7
Section 6(1):	substituted by 35, 1990, s. 8
Section 6(5) - (7):	inserted by 80, 1992, s. 6
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):	amended by 35, 1990, s. 4(a); substituted by 40, 1995, s. 5(a)
Section 14(2a):	inserted by 40, 1995, s. 5(a)
Section 14(3):	amended by 35, 1990, s. 4(a); 40, 1995, s. 5(b)
Section 14(4):	amended by 35, 1990, s. 4(a); 80, 1992, s. 7; 40, 1995, s. 5(c)-(e)
Section 15:	amended by 35, 1990, s. 4(a); substituted by 40, 1995, s. 6
Section 16(1):	amended by 35, 1990, s. 4(a); 40, 1995, s. 7(a)
Section 16(2):	amended by 35, 1990, s. 4(a)
Section 16(3):	amended by 35, 1990, s. 4(a), (b); substituted by 80, 1992, s. 8
Section 16(4):	amended by 35, 1990, s. 4(a); substituted by 80, 1992, s. 8
Section 16(4a):	inserted by 80, 1992, s. 8; repealed by 40, 1995, s. 7(b)
Section 17(1):	amended by 35, 1990, s. 4(a); 80, 1992, s. 9; 75, 1993, s. 5(b); 40, 1995, s. 8
Section 17(1)(b)(ii):	repealed by 75, 1993, s. 5(a)
Section 18:	amended by 35, 1990, ss. 4(a), 12; 80, 1992, s. 10; substituted by 40, 1995, s. 9
Section 19:	amended by 35, 1990, s. 4(a)
Section 19(1):	amended by 34, 1996, s. 4 (Sched. cl. 9)
Section 20:	substituted by 35, 1990, s. 13; 40, 1995, s. 10
Section 20A:	inserted by 35, 1990, s. 13; amended by 80, 1992, s. 11; repealed by 40, 1995, s. 10
Section 20B:	inserted by 35, 1990, s. 13; repealed by 40, 1995, s. 10
Section 20C:	inserted by 35, 1990, s. 13; amended by 40, 1995, s. 11
Section 21:	amended by 35, 1990, s. 14; substituted by 40, 1995, s. 12
Section 22(1):	amended by 35, 1990, s. 15; 40, 1995, s. 13
Section 23(1):	amended by 35, 1990, s. 16; 40, 1995, s. 14
Section 24(1):	amended by 35, 1990, s. 17(a); 80, 1992, s. 12(a); 40, 1995, s. 15(a)
Section 24(2):	substituted by 69, 1992, s. 16(a)
Section 24(3):	amended by 35, 1990, s. 17(b); 69, 1992, s. 16(b); 40, 1995, s. 15(b)
Section 24(4a):	inserted by 80, 1992, s. 12(b); amended by 40, 1995, s. 15(c)
Section 25(2):	substituted by 40, 1995, s. 16
Section 25(3):	inserted by 40, 1995, s. 16
Heading preceding section 26:	substituted by 35, 1990, s. 18
Section 26:	substituted by 35, 1990, s. 19
Section 26(2):	amended by 40, 1996, s. 17(a)
Section 26(3):	substituted by 40, 1995, s. 17(b)
Section 26(4) and (5):	repealed by 40, 1995, s. 17(b)
Section 26(7):	inserted by 80, 1992, s. 13
Section 27(1) and (2):	substituted by 35, 1990, s. 20(a)
Section 27(5):	amended by 35, 1990, s. 20(b); substituted by 80, 1992, s. 14; amended by 34, 1996, s. 4 (Sched. cl. 9)
Section 27(6):	inserted by 80, 1992, s. 14
Section 28(1) and (2):	amended by 35, 1990, s. 21

Section 29(1):	amended by 35, 1990, s. 22; 80, 1992, s. 15
Section 31:	amended by 35, 1990, s. 23
Section 32:	amended by 35, 1990, s. 24
Section 33(2):	amended by 40, 1995, s. 18
Section 37:	amended by 35, 1990, s. 25
Section 37A:	inserted by 40, 1995, s. 19
Section 38(1):	amended by 35, 1990, s. 4(c)
Sections 38A and 38B:	inserted by 80, 1992, s. 16
Section 40(1):	amended by 35, 1990, s. 26
Section 43(2):	amended by 80, 1992, s. 17(a)
Section 43(2a):	inserted by 80, 1992, s. 17(b)
Section 43(3):	substituted by 80, 1992, s. 17(c)
Section 43(4):	inserted by 80, 1992, s. 17(c)
Section 44(1):	amended by 35, 1990, s. 27
Section 45(1):	amended by 35, 1990, s. 28(a)
Section 45:	amended by 35, 1990, s. 28(b); 80, 1992, s. 18; 40, 1995, s. 20; substituted by 34, 1996, s. 4 (Sched. cl. 9)
Section 46(2):	amended by 34, 1996, s. 4 (Sched. cl. 9)
Schedule 1:	substituted by 35, 1990, s. 29; amended by 80, 1992, s. 19
Schedule 1A:	inserted by 40, 1995, s. 21
Schedule 2:	substituted by 35, 1990, s. 30
Schedule 3:	substituted by 72, 1989, s. 3; 35, 1990, s. 31; 40, 1995, s. 22
Schedule 4:	inserted by 44, 1997, s. 2