

South Australia

# **Construction Industry Long Service Leave Act 1987**

An Act to provide for the granting of long service leave to workers in the building industry; and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

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

#### 4—Interpretation

- (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 under the *Fair Work Act 1994*; or
- (b) an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth; or
- (c) an agreement given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* 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, determination or order of Fair Work Australia under the *Fair Work Act 2009* of the Commonwealth;
- (c) an award or determination given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth;

**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 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 prescribed period** means—

- (a) in reference to a person who has an effective service entitlement of less than 1 300 days—24 months;
- (b) in reference to a person who has an effective service entitlement of 1 300 days or more—36 months;

**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.

#### **4A—Determination of ordinary weekly pay in certain circumstances**

- (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.

## **5—Application of this Act**

(1aa) Subject to this section and Schedule 5, 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 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 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) in the case of a person employed for less than 1 month—the whole period of employment; or
      - (B) in the case of a person employed for 1 month or more but less than 3 months—the first month of employment; or
      - (C) in the case of a person employed for 3 months or more—any 3 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
  - (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.
- (2b) Despite subsection (1aa), Parts 3 and 5 do not apply to a person's employment (and consequently the person is not a construction worker for the purposes of those Parts) if the person's employer is a body corporate and the person is a director of that body corporate.
- (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.
- (3a) Subsections (1) and (1a) do not apply in relation to a person who—
- (a) is employed in the civil construction industry as defined in the *Building and Construction General On-site Award 2010* unless the person is employed in building work that wholly or predominantly involves working on structures within the meaning of this Act; or
  - (b) falls within any class of employees excluded from the operation of that subsection by the regulations.
- (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—
- director* of a body corporate includes—
- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
  - (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

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

## Part 2—The Construction Industry Long Service Leave Board

### 6—The Board

- (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.

### 7—Membership of the Board

- (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.

## **8—Conditions of membership**

- (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.

## **9—Fees and allowances**

- (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.

## **10—Proceedings at meetings of the Board**

- (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.

### **11—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the construction industry generally, or a substantial section of those engaged in or associated with the construction industry.

### **12—Delegation by Board**

- (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.

### **13—Board may make use of public facilities**

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**

### **14—Effective service entitlement**

- (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—
  - (a) for each day that he or she works as a construction worker; and
  - (b) for each day of a period of allowable absence,(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 has not previously had an effective service entitlement of 2 600 days or more; and
- (c) the construction worker ceases to be employed as such for a continuous period that is equal to, or longer than, the prescribed period 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).

(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.

## **15—Crediting effective service under this Act and the Long Service Leave Act**

- (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).

## 16—Long service leave entitlement

- (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.

## **17—Cessation of employment**

- (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
    - (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).

## 18—Preservation of entitlements in certain cases

- (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 the prescribed period 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.

## 19—Employment during leave

- (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.  
Maximum 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.  
Maximum penalty: \$1 000.

## Part 4—Funding

### 20—The Construction Industry Fund

- (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.

### 20C—Exemption from taxes and charges

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

### 21—Investment of the Fund

- (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.

## **22—Loans for training purposes**

- (1) The Board may, with the approval of the Minister and the Treasurer, lend money from the Fund to an industrial organisation 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.

## **23—Borrowing by the Board**

- (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).

## **24—Investigation of the Fund**

- (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 receipt of a report under subsection (3)—
  - (a) supply a copy of the report to the Minister; and
  - (b) include with the report an indication as to whether the Board intends to vary, or leave unaltered, the rates of contribution to the Fund required under section 26.
- (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.

## **25—Accounts and audit**

- (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

### 26—Imposition of levy

- (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.
- (2a) The percentage fixed by the Board under this section—
  - (a) may only be varied by the Board—
    - (i) in accordance with an indication to the Minister under section 24(4)(b); and
    - (ii) after 14 days has elapsed since the provision of that indication; and
  - (b) must be less than or equal to 3%.
- (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.
- (8) In this section—

*prescribed percentage* means a percentage fixed by the Board by notice published in the Gazette.

### 27—Returns by employers

- (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 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.

Maximum 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.

## **28—Recovery on default**

- (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.
- Maximum penalty: \$5 000.

## 29—Penalty for late payment

- (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.

## 30—Power to require information etc

- (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.

Maximum 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.

### **31—Recovery of levies**

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.

### **32—Refund of overpayments**

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

## **Part 6—Appeals**

### **33—The Appeals Tribunal**

- (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.

### **34—Appeals**

- (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.

### **35—Powers of Tribunal**

- (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
  - (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.  
Maximum 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.

### **36—Practice and procedure**

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

### **37—Effect of pending appeal**

- (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**

### **37A—Self-employed contractors and working directors**

- (1) This section applies to—
  - (a) a self-employed contractor in the construction industry; and
  - (b) a person who is employed under a contract of service in the construction industry by a body corporate of which he or she is a director.
- (1a) A person to whom this section applies may, on application to the Board in a form approved by the Board, be registered by the Board under this section.
- (2) A registered person is eligible to participate in an investment scheme established by the Board for the purposes of this section.
- (3) If, in the case of a self-employed contractor—
  - (a) the contractor had previously been a construction worker; and

- (b) he or she 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) he or she commenced work as a self-employed contractor in the construction industry within the prescribed period after cessation of his or her employment as a construction worker; and
- (d) the application for registration under this section 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.

(3a) If—

- (a) a person who applies for registration under subsection (1a) was—
  - (i) a director to whom this section applies at the commencement of the *Construction Industry Long Service Leave (Miscellaneous) Amendment Act 2000*; or
  - (ii) a construction worker immediately before becoming a director to whom this section applies; and
- (b) the application for registration was made within six months after the commencement of that Act or the date on which the person became a director (as the case requires),

any effective service entitlement in respect of that person immediately before the commencement of that Act or the time at which he or she became a director is preserved on registration.

(3b) If—

- (a) a person 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
- (b) within the prescribed period after ceasing work as a construction worker he or she becomes a director to whom this section applies; and
- (c) he or she applies for registration under this section within six months after becoming a director (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 or the employer of a director to whom this section applies 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 contractor or employer in advance or, with the approval of the Board, in arrears); and
  - (c) the registered person 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
    - (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 person 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 person'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), (3a) or (3b) (or, if no such entitlement is preserved, zero)

**CI** is the total of the registered person'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 person has attained an effective service entitlement of 1 820 days (including any effective service entitlement preserved under subsection (3), (3a) or (3b)); or
    - (ii) a registered person 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 person 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 person (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 person has ceased work in the construction industry; and

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

the Board must pay to the registered person 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 person'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), (3a) or (3b), subject to the qualification that if the aggregate of the registered person's effective service entitlement preserved under subsection (3), (3a) or (3b) and the registered person'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 person'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).

- (10) If a registered person—

- (a) ceases to be a self-employed contractor in the construction industry or a director to whom this section applies; and

- (b) does not have an entitlement under subsection (6) or (7); and

- (c) has not received and will not be receiving a payment from the Board under subsection (8); and

- (d) has become (or has become again) a person to whose employment this Act applies (see section 5) within the prescribed period after ceasing to be a self-employed contractor or a director to whom this section applies (as the case requires),

the effective service entitlement accrued under this section together with the effective service entitlement (if any) preserved under subsection (3), (3a) or (3b) will be credited to the person for the purposes of Part 3.

(11) In this section—

*director* of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the director or members of the governing body of the body corporate are accustomed to act;

*director to whom this section applies* means a person referred to in subsection (1)(b);

*registered person* means a person registered by the Board under subsection (1a).

### **38—Reciprocal arrangements with other States and Territories**

- (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.

### **38A—Exemptions for certain interstate employers**

- (1) An employer—
  - (a) who is domiciled outside the State and involved in the construction industry in the State; or
  - (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.

### **38B—Inspectors**

- (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.

### **39—Powers of inspection**

- (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.

Maximum 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.

### **40—Records**

- (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.

Maximum 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.

Maximum 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.
- Maximum penalty: \$1 000.

#### **41—Service of documents**

- (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.

#### **42—Annual report**

- (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.

#### **43—Offences**

- (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.

Maximum penalty: \$5 000.

#### **44—Evidentiary provision**

- (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.

#### **45—Expiation fees**

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.

#### **46—Regulations**

- (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.

### **Schedule 1—Construction Workers Awards**

Building and Construction General On-site Award 2010

Joinery and Building Trades Award 2010

Plumbing and Fire Sprinklers Award 2010

Electrical, Electronic and Communications Contracting Award 2010

### **Schedule 1A—Optional coverage**

#### **Award**

The Building and Construction General On-site Award 2010, but only in relation to the following classifications and only in the terrazzo or concrete casting industries:

- (a) Carpenter;
- (b) Joiner;
- (c) Tradesperson (precast concrete manufacture);
- (d) Machinist (precast concrete manufacture);
- (e) Terrazzo Assistant;
- (f) General Hand;
- (g) Adult trainee terrazzo worker.

The Manufacturing and Associated Industries and Occupations Award 2010, but only in relation to workers employed in the preparation or manufacture of any of the following:

- (a) fibrous plaster;
- (b) architectural ornaments made of fibrous plaster, plaster or cement;
- (c) plaster tiles or sheets (whether containing fibre or not);
- (d) architectural models;
- (e) material for suspended ceilings.

## **Schedule 2—Effective service entitlement—electrical or metal trades**

### **1—Interpretation**

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.

### **2—Application of Schedule**

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.

### **3—Crediting of effective service entitlement**

- (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

### 1—Interpretation

In this Schedule—

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

### 2—Conversion of entitlements

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.

### 3—Continuity of application

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).

#### **4—Special rates—Self-employed contractors**

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).

### **Schedule 4—Transitional provisions—1975 Act**

#### **1—Interpretation**

In this Schedule—

*1987 transitional provisions* means the provisions that constituted Schedule 3 of this Act at the time that this Act came into operation (1 April 1988).

#### **2—Effective service entitlements not previously recognised**

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).

#### **3—Employer contributions**

- (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.

#### **4—Leave previously granted**

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.

### **Schedule 5—Coverage of awards**

#### **1—Coverage of awards**

Section 5 operates subject to the qualification that to the extent that the application of this Act to a person's employment depends on whether or not an award applies in relation to the person then—

- (a) this Act will apply to the person if, after taking into account (and applying) the provisions of any award that applied under this Act on 31 December 2009, the person's employment would be subject to the application of this Act; and
- (b) this Act will not apply to the person if, after taking into account (and applying) the provisions of any award that applied under this Act on 31 December 2009, the person's employment would not be subject to the application of this Act.

#### **2—Related principles**

Clause 1—

- (a) does not limit any requirement under this Act for an agreement to be in place or for any other step to be taken; and
- (b) operates on the basis that to the extent of any inconsistency between an award referred to in Schedule 1 or 1A and an award that operates under clause 1(a) or (b), the award that operates under clause 1(a) or (b) prevails to the extent of the inconsistency (even though the award has been superseded by an award under Schedule 1 or 1A).

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Formerly

*Long Service Leave (Building Industry) Act 1987*

### Legislation repealed by principal Act

The *Construction Industry Long Service Leave Act 1987* repealed the following:

*Long Service Leave (Building Industry) Act 1975*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1987	77	<i>Long Service Leave (Building Industry) Act 1987</i>	19.11.1987	1.4.1988 ( <i>Gazette 24.3.1988 p692</i> )
1989	72	<i>Long Service Leave (Building Industry) Act Amendment Act 1989</i>	29.10.1989	1.12.1989 ( <i>Gazette 16.11.1989 p1501</i> )
1990	35	<i>Long Service Leave (Building Industry) Act Amendment Act 1990</i>	26.4.1990	1.7.1990 ( <i>Gazette 17.5.1990 p1358</i> )
1992	69	<i>Statutes Amendment (Public Actuary) Act 1992</i>	19.11.1992	10.12.1992 ( <i>Gazette 10.12.1992 p1752</i> )
1992	80	<i>Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1992</i>	3.12.1992	1.1.1993 ( <i>Gazette 10.12.1992 p1754</i> )
1993	75	<i>Statutes Amendment (Abolition of Compulsory Retirement) Act 1993</i>	21.10.1993	1.1.1994: s 2
1995	40	<i>Construction Industry Long Service Leave (Miscellaneous) Amendment Act 1995</i>	4.5.1995	1.7.1995 ( <i>Gazette 15.6.1995 p2840</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 9)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
1997	44	<i>Construction Industry Long Service Leave (Transitional Provisions) Amendment Act 1997</i>	24.7.1997	24.7.1997

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### Legislative history

2000	83	<i>Construction Industry Long Service Leave (Miscellaneous) Amendment Act 2000</i>	14.12.2000	21.12.2000 ( <i>Gazette 21.12.2000 p3688</i> )
2009	58	<i>Statutes Amendment (National Industrial Relations System) Act 2009</i>	26.11.2009	Pt 2 (s 4)—1.1.2010 ( <i>Gazette 17.12.2009 p6351</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 35 (s 64)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2012</b>	<b>48</b>	<b><i>Construction Industry Long Service Leave (Miscellaneous) Amendment Act 2012</i></b>	<b>6.12.2012</b>	<b>1.1.2013 (<i>Gazette 20.12.2012 p5741</i>) except s 6—1.11.2013 (<i>Gazette 24.10.2013 p4088</i>)</b>
2016	63	<i>Statutes Amendment (South Australian Employment Tribunal) Act 2016</i>	8.12.2016	Pt 5 (ss 70—76)—1.7.2017 ( <i>Gazette 16.5.2017 p1221</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 1	substituted by 35/1990 s 3	1.7.1990
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
s 4(1)		
actuary	inserted by 69/1992 s 15	10.12.1992
agreement	substituted by 80/1992 s 3(a)	1.1.1993
	substituted by 40/1995 s 3(a)	1.7.1995
	substituted by 58/2009 s 4(1)	1.1.2010
allowable absence	amended by 35/1990 s 4(a)	1.7.1990
apprentice	inserted by 40/1995 s 3(b)	1.7.1995
award	substituted by 80/1992 s 3(b)	1.1.1993
	amended by 40/1995 s 3(c)	1.7.1995
	amended by 58/2009 s 4(2)	1.1.2010
the Board	substituted by 35/1990 s 5(a)	1.7.1990
building work	amended by 35/1990 s 5(b)	1.7.1990
construction industry	inserted by 35/1990 s 5(c)	1.7.1990
<i>construction work</i>	<i>inserted by 35/1990 s 5(c)</i>	<i>1.7.1990</i>
	<i>amended by 80/1992 s 3(c)</i>	<i>1.1.1993</i>
	<i>deleted by 40/1995 s 3(d)</i>	<i>1.7.1995</i>
<i>building worker</i>	<i>deleted by 35/1990 s 5(c)</i>	<i>1.7.1990</i>
construction worker	inserted by 35/1990 s 5(c)	1.7.1990
contract of service	substituted by 40/1995 s 3(e)	1.7.1995
<i>contribution</i>	<i>deleted by 35/1990 s 5(d)</i>	<i>1.7.1990</i>

effective service	amended by 35/1990 s 4(a)	1.7.1990
the electrical and metal trades industry	inserted by 35/1990 s 5(e)	1.7.1990
electrical or metal trades work	inserted by 35/1990 s 5(e)	1.7.1990
	substituted by 40/1995 s 3(f)	1.7.1995
employer	amended by 35/1990 s 4(a)	1.7.1990
<i>the Fund</i>	<i>deleted by 35/1990 s 5(f)</i>	<i>1.7.1990</i>
<i>the Funds</i>	<i>inserted by 35/1990 s 5(f)</i>	<i>1.7.1990</i>
	<i>deleted by 40/1995 s 3(g)</i>	<i>1.7.1995</i>
the Fund	inserted by 40/1995 s 3(g)	1.7.1995
inspector	substituted by 80/1992 s 3(d)	1.1.1993
levy	inserted by 80/1992 s 3(d)	1.1.1993
<i>ordinary hours</i>	<i>amended by 35/1990 s 4(a)</i>	<i>1.7.1990</i>
	<i>amended by 80/1992 s 3(e)</i>	<i>1.1.1993</i>
	<i>deleted by 40/1995 s 3(h)</i>	<i>1.7.1995</i>
ordinary weekly pay	amended by 35/1990 s 4(a)	1.7.1990
	substituted by 80/1992 s 3(f)	1.1.1993
<i>prescribed percentage</i>	<i>deleted by 35/1990 s 5(g)</i>	<i>1.7.1990</i>
the prescribed period	inserted by 83/2000 s 3	21.12.2000
the relevant date	inserted by 80/1992 s 3(f)	1.1.1993
return period	inserted by 40/1995 s 3(i)	1.7.1995
<i>working day</i>	<i>deleted by 35/1990 s 5(h)</i>	<i>1.7.1990</i>
s 4(2)	substituted by 40/1995 s 3(j)	1.7.1995
s 4(3)	inserted by 80/1992 s 3(g)	1.1.1993
	substituted by 40/1995 s 3(j)	1.7.1995
s 4(4)	inserted by 40/1995 s 3(j)	1.7.1995
s 4A	inserted by 80/1992 s 4	1.1.1993
s 5		
s 5(1aa)	inserted by 40/1995 s 4(a)	1.7.1995
	amended by 48/2012 s 4(1)	1.1.2013
s 5(1)	substituted by 35/1990 s 6(a)	1.7.1990
	amended by 80/1992 s 5(a)	1.1.1993
	amended by 40/1995 s 4(b)—(d)	1.7.1995
	amended by 48/2012 s 4(2)	1.1.2013
s 5(1a) and (1b)	inserted by 40/1995 s 4(e)	1.7.1995
s 5(2)	amended by 80/1992 s 5(b)	1.1.1993
s 5(2a)	inserted by 40/1995 s 4(f)	1.7.1995
s 5(2b)	inserted by 83/2000 s 4(a)	21.12.2000
s 5(3)	substituted by 35/1990 s 6(b)	1.7.1990
s 5(3a)	inserted by 48/2012 s 4(3)	1.1.2013

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s 5(6)	inserted by 40/1995 s 4(g)	1.7.1995
director	inserted by 83/2000 s 4(b)	21.12.2000
Pt 2	heading substituted by 35/1990 s 7	1.7.1990
s 6		
s 6(1)	substituted by 35/1990 s 8	1.7.1990
s 6(5)—(7)	inserted by 80/1992 s 6	1.1.1993
s 7		
s 7(1)	substituted by 35/1990 s 9	1.7.1990
s 8		
s 8(2)	substituted by 35/1990 s 10	1.7.1990
s 10		
s 10(3)	amended by 35/1990 s 11(a)	1.7.1990
s 10(4)	amended by 35/1990 s 11(b)	1.7.1990
s 11	substituted by 84/2009 s 64	1.2.2010
Pt 3		
s 14		
s 14(1)	amended by 35/1990 s 4(b)	1.7.1990
s 14(2)	amended by 35/1990 s 4(a)	1.7.1990
	substituted by 40/1995 s 5(a)	1.7.1995
	substituted by 83/2000 s 5(a)	21.12.2000
s 14(2a)	inserted by 40/1995 s 5(a)	1.7.1995
s 14(3)	amended by 35/1990 s 4(a)	1.7.1990
	amended by 40/1995 s 5(b)	1.7.1995
s 14(4)	amended by 35/1990 s 4(a)	1.7.1990
	amended by 80/1992 s 7	1.1.1993
	amended by 40/1995 s 5(c)—(e)	1.7.1995
	amended by 83/2000 s 5(b), (c)	21.12.2000
s 15	amended by 35/1990 s 4(a)	1.7.1990
	substituted by 40/1995 s 6	1.7.1995
s 16		
s 16(1)	amended by 35/1990 s 4(a)	1.7.1990
	amended by 40/1995 s 7(a)	1.7.1995
s 16(2)	amended by 35/1990 s 4(a)	1.7.1990
s 16(3)	amended by 35/1990 s 4(a), (b)	1.7.1990
	substituted by 80/1992 s 8	1.1.1993
s 16(4)	amended by 35/1990 s 4(a)	1.7.1990
	substituted by 80/1992 s 8	1.1.1993
s 16(4a)	<i>inserted by 80/1992 s 8</i>	<i>1.1.1993</i>
	<i>deleted by 40/1995 s 7(b)</i>	<i>1.7.1995</i>
s 17		
s 17(1)	amended by 35/1990 s 4(a)	1.7.1990
	amended by 80/1992 s 9	1.1.1993
	(b)(ii) deleted by 75/1993 s 5(a)	1.1.1994

	amended by 75/1993 s 5(b)	1.1.1994
	amended by 40/1995 s 8	1.7.1995
	amended by 83/2000 s 6	21.12.2000
s 18	amended by 35/1990 ss 4(a), 12	1.7.1990
	amended by 80/1992 s 10	1.1.1993
	substituted by 40/1995 s 9	1.7.1995
s 18(1)	amended by 83/2000 s 7	21.12.2000
s 19		
s 19(1)	amended by 35/1990 s 4(a)	1.7.1990
	amended by 34/1996 s 4 (Sch cl 9)	3.2.1997
s 19(2)	amended by 35/1990 s 4(a)	1.7.1990
Pt 4		
s 20	substituted by 35/1990 s 13	1.7.1990
	substituted by 40/1995 s 10	1.7.1995
s 20A	<i>inserted by 35/1990 s 13</i>	<i>1.7.1990</i>
	<i>amended by 80/1992 s 11</i>	<i>1.1.1993</i>
	<i>deleted by 40/1995 s 10</i>	<i>1.7.1995</i>
s 20B	<i>inserted by 35/1990 s 13</i>	<i>1.7.1990</i>
	<i>deleted by 40/1995 s 10</i>	<i>1.7.1995</i>
s 20C	inserted by 35/1990 s 13	1.7.1990
	amended by 40/1995 s 11	1.7.1995
s 21	amended by 35/1990 s 14	1.7.1990
	substituted by 40/1995 s 12	1.7.1995
s 22		
s 22(1)	amended by 35/1990 s 15	1.7.1990
	amended by 40/1995 s 13	1.7.1995
s 23		
s 23(1)	amended by 35/1990 s 16	1.7.1990
	amended by 40/1995 s 14	1.7.1995
s 24		
s 24(1)	amended by 35/1990 s 17(a)	1.7.1990
	amended by 80/1992 s 12(a)	1.1.1993
	amended by 40/1995 s 15(a)	1.7.1995
s 24(2)	substituted by 69/1992 s 16(a)	10.12.1992
s 24(3)	amended by 35/1990 s 17(b)	1.7.1990
	amended by 69/1992 s 16(b)	10.12.1992
	amended by 40/1995 s 15(b)	1.7.1995
s 24(4)	substituted by 48/2012 s 5	1.1.2013
s 24(4a)	<i>inserted by 80/1992 s 12(b)</i>	<i>1.1.1993</i>
	<i>amended by 40/1995 s 15(c)</i>	<i>1.7.1995</i>
	<i>deleted by 48/2012 s 5</i>	<i>1.1.2013</i>
s 25		
s 25(2)	substituted by 40/1995 s 16	1.7.1995

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s 25(3)	inserted by 40/1995 s 16	1.7.1995
Pt 5	heading substituted by 35/1990 s 18	1.7.1990
s 26	substituted by 35/1990 s 19	1.7.1990
s 26(2)	amended by 40/1995 s 17(a)	1.7.1995
s 26(3)	substituted by 40/1995 s 17(b)	1.7.1995
<b>s 26(2a)</b>	<b>inserted by 48/2012 s 6(1)</b>	<b>1.11.2013</b>
s 26(4) and (5)	deleted by 40/1995 s 17(b)	1.7.1995
s 26(7)	inserted by 80/1992 s 13	1.1.1993
<b>s 26(8)</b>	<b>inserted by 48/2012 s 6(2)</b>	<b>1.11.2013</b>
s 27		
s 27(1) and (2)	substituted by 35/1990 s 20(a)	1.7.1990
s 27(5)	amended by 35/1990 s 20(b)	1.7.1990
	substituted by 80/1992 s 14	1.1.1993
	amended by 34/1996 s 4 (Sch cl 9)	3.2.1997
s 27(6)	inserted by 80/1992 s 14	1.1.1993
s 28		
s 28(1) and (2)	amended by 35/1990 s 21	1.7.1990
s 29		
s 29(1)	amended by 35/1990 s 22	1.7.1990
	amended by 80/1992 s 15	1.1.1993
s 31	amended by 35/1990 s 23	1.7.1990
s 32	amended by 35/1990 s 24	1.7.1990
Pt 6		
s 33		
s 33(2)	amended by 40/1995 s 18	1.7.1995
s 37	amended by 35/1990 s 25	1.7.1990
Pt 7		
s 37A	inserted by 40/1995 s 19	1.7.1995
s 37A(1)	substituted by 83/2000 s 8(a)	21.12.2000
s 37A(1a)	inserted by 83/2000 s 8(a)	21.12.2000
s 37A(2)	amended by 83/2000 s 8(b)	21.12.2000
s 37A(3)	substituted by 83/2000 s 8(c)	21.12.2000
s 37A(3a) and (3b)	inserted by 83/2000 s 8(c)	21.12.2000
s 37A(4)	amended by 83/2000 s 8(d)—(f)	21.12.2000
s 37A(6)	amended by 83/2000 s 8(g)—(i)	21.12.2000
s 37A(7)	amended by 83/2000 s 8(j), (k)	21.12.2000
s 37A(8)	amended by 83/2000 s 8(l)—(n)	21.12.2000
s 37A(10) and (11)	inserted by 83/2000 s 8(o)	21.12.2000
s 38		
s 38(1)	amended by 35/1990 s 4(c)	1.7.1990
ss 38A and 38B	inserted by 80/1992 s 16	1.1.1993
s 40		
s 40(1)	amended by 35/1990 s 26	1.7.1990

s 43		
s 43(2)	amended by 80/1992 s 17(a)	1.1.1993
s 43(2a)	inserted by 80/1992 s 17(b)	1.1.1993
s 43(3)	substituted by 80/1992 s 17(c)	1.1.1993
s 43(4)	inserted by 80/1992 s 17(c)	1.1.1993
s 44		
s 44(1)	amended by 35/1990 s 27	1.7.1990
s 45	amended by 35/1990 s 28(a), (b)	1.7.1990
	amended by 80/1992 s 18	1.1.1993
	amended by 40/1995 s 20	1.7.1995
	substituted by 34/1996 s 4 (Sch cl 9)	3.2.1997
s 46		
s 46(2)	amended by 34/1996 s 4 (Sch cl 9)	3.2.1997
Sch 1	substituted by 35/1990 s 29	1.7.1990
	amended by 80/1992 s 19	1.1.1993
	substituted by 48/2012 s 7	1.1.2013
Sch 1A	inserted by 40/1995 s 21	1.7.1995
	substituted by 48/2012 s 8	1.1.2013
Sch 2	substituted by 35/1990 s 30	1.7.1990
Sch 3	substituted by 72/1989 s 3	1.12.1989
	substituted by 35/1990 s 31	1.7.1990
	substituted by 40/1995 s 22	1.7.1995
Sch 4	inserted by 44/1997 s 2	24.7.1997
Sch 5	inserted by 48/2012 s 9	1.1.2013

## Transitional etc provisions associated with Act or amendments

### *Long Service Leave (Building Industry) Act Amendment Act 1990*

#### 32—Transitional provision

- (1) The Construction Industry Long Service Leave Board is the same body as the Board established under the principal Act and in existence immediately before the commencement of this Act.
- (2) The offices of all members of the Board become vacant on the commencement of this Act.

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### 5—Transitional provision

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.

## Historical versions

Reprint No 1—1.7.1991

Reprint No 2—1.1.1993

Reprint No 3—1.1.1994

Reprint No 4—1.7.1995

Reprint No 5—3.2.1997

Reprint No 6—24.7.1997

Reprint No 7—21.12.2000

1.1.2010

1.2.2010

1.1.2013