



LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT, 1987

No. 77 of 1987

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ELIZABETHAE II REGINAE

A.D. 1987

No. 77 of 1987

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.

[Assented to 19 November 1987]

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

1. This Act may be cited as the “Long Service Leave (Building Industry) Act, 1987”. Short title.
2. This Act will come into operation on a day to be fixed by proclamation. Commencement.
3. The Long Service Leave (Building Industry) Act, 1975, is repealed. Repeal.
4. (1) In this Act, unless the contrary intention appears— Interpretation.

“agreement” means—

 - (a) an industrial agreement within the meaning of the Industrial Conciliation and Arbitration Act, 1972;
 - or
 - (b) an industrial agreement filed in the office of the Industrial Registrar under the *Conciliation and Arbitration Act 1904* of the Commonwealth:

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

“award” includes—

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

“the Board” means the Long Service Leave (Building Industry) 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 (including off site work carried out by or on behalf of a builder whose work is carried out partially on site and partially off 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:

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

“contract of service” includes an apprenticeship agreement:

“contribution” means an amount payable by an employer to the Board under this Act:

“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 building worker credited under this Act:

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

“the Fund” means the Long Service Leave (Building Industry) Fund continued under Part IV:

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

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

“ordinary weekly pay”, in relation to work as a building worker, means the weekly base rate of pay for ordinary hours prescribed

by an award or agreement in relation to work of that kind (including any remuneration or payment of a class declared by regulation to be part of ordinary pay):

“prescribed percentage”, in relation to wages paid to a building worker during a particular period, means the percentage declared by regulation to be the prescribed percentage in relation to that period:

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

“special rates or allowances” means—

- (a) remuneration categorized by an award or agreement as special rates or allowances;
- (b) remuneration categorized by the regulations as special rates or allowances:

“structure” includes—

- (a) a tank or other structure for the storage or supply of water;
- (b) sewerage or effluent drains and associated structures;
- (c) a bridge, viaduct, aquaduct 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:

“working day”, in relation to a building worker, means a day on which the worker works.

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

5. (1) Subject to this section, this Act applies to a person’s employment if— Application of this Act.

- (a) that person works under a contract of service for an employer in the building industry in one or more of the occupational categories referred to in the first schedule or the regulations;
- (b) an award or agreement referred to in the second schedule or the regulations governs that person’s weekly pay;

and

- (c) the employment involves work at a building site and such work makes up the whole, or a proportion of at least one-half, of the period of employment over—
 - (i) the whole period of employment;
 - (ii) the first month of employment;
 or
 - (iii) any three-month period of employment,

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

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

(3) Where—

(a) a person carries out building work on buildings or structures owned or occupied by his or her employer (not being buildings or structures intended for subsequent sale or lease);

and

(b) that is the sole building work in which the person is engaged by that employer,

this Act does not apply to that employment.

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

(a) the Crown;

(b) an agency or instrumentality of the Crown;

(c) a council;

(d) a prescribed employer or an employer of a prescribed class.

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

PART II

THE LONG SERVICE LEAVE (BUILDING INDUSTRY) BOARD

The Board.

6. (1) The *Long Service Leave (Building Industry) Board* continues in existence.

(2) The Board is a body corporate.

(3) The Board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(4) An apparently genuine document that appears to bear the common seal of the Board and to be signed by the presiding officer and the chief executive officer of the Board, or by any two of its members, will be taken, in any legal proceedings, in the absence of proof to the contrary, to be duly executed by the Board.

Membership of Board.

7. (1) The Board consists of five members, appointed by the Governor, of whom—

(a) one (who will be the presiding officer of the Board) will be a person nominated by the Minister;

(b) one will be a person nominated by the Chamber of Commerce and Industry South Australia Incorporated;

(c) one will be a person nominated by the South Australian Employers' Federation Incorporated;

and

(d) two will be persons nominated by the United Trades and Labor Council.

(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. (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. Conditions of membership.

(2) The Governor may remove a member of the Board from office—

(a) for—

(i) mental or physical incapacity to carry out official duties satisfactorily;

(ii) neglect of duty;

or

(iii) dishonourable conduct;

or

(b) on revocation of the nomination by the body or person on whose nomination the member was appointed.

(3) Subject to subsection (4), the office of a member of the Board becomes vacant if—

(a) the member dies;

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

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

(d) the member is absent without leave of the Minister from three consecutive meetings of the Board;

or

(e) the member is removed by the Governor under subsection (2).

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

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

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

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. Proceedings at meetings of the Board.

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

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

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

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

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

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

Immunity of
Board's members.

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

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

Delegation by
Board.

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

(2) A delegation under this section—

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

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

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

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

Board may make
use of public
facilities.

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

PART III

LONG SERVICE LEAVE ENTITLEMENTS

Effective service
entitlement.

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

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

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

where—

- E is the effective service entitlement (expressed in months)
- TH is the sum of the total number of hours worked as a building worker during the period of service (disregarding any hours worked in any week in excess of ordinary hours) and the total number of ordinary hours for which the person was absent from that work during that period as a result of allowable absences
- OH is the ordinary hours in relation to the period of service.

(3) Where—

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

and

- (b) the Board is satisfied, after affording the former building worker and his or her former employer an opportunity to be heard, that the building 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 building worker has an effective service entitlement of less than 84 months;

(b) the building worker—

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

or

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

and

- (c) the building 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 building worker continues in employment by the person in whose employment the entitlement accrued (either wholly or in part)).

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

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

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

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

(3) Where—

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

and

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

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

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

where—

A is the amount payable

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

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

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

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

(4) Where—

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

and

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

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

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

where—

A is the amount recoverable

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

N is the number of weeks leave required to be granted, or the number of weeks in respect of which the payment on account of long service leave is made, under this Act

CS is the person's period of continuous service accrued under the Long Service Leave Act, 1987, at the time that the person commenced work as a building worker, expressed in months to one decimal place

E is the effective service entitlement of the person as a building worker under this Act in respect of which the entitlement arises.

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

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

Long service
leave entitlement.

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

(3) Where—

(a) a building worker takes long service leave;

or

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

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

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

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

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

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

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

or

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

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

or

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

and

(b) the building worker has—

(i) died;

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

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

or

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

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

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

where—

A is the amount payable

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

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

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

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

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

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

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

E is the effective service entitlement.

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

18. (1) Where—

(a) a person who has an effective service entitlement ceases to be employed as a building worker;

(b) the person is not entitled to long service leave or a payment for pro rata long service leave;

(c) the person commences work as a self-employed contractor in the building industry within 36 months after cessation of his or her employment as a building worker;

and

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

the effective service entitlement is preserved.

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

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

where—

A is the amount payable

OWP is the ordinary weekly pay for work of the kind last performed by the person as a building worker as at the day of payment

E is the effective service entitlement.

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

Penalty: \$1 000.

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

Penalty: \$1 000.

PART IV

FUNDING

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

(2) The Fund will be controlled and managed by the Board.

(3) The Fund will consist of—

(a) contributions received by the Board from employers;

(b) any income and accretions produced by the investment of money from the Fund;

(c) any money advanced to the Board for the purposes of the Fund;

and

(d) other money received by the Board under this Act.

(4) The Fund will be applied towards—

- (a) the payments that the Board is liable to make under this Act;
- (b) the costs incurred by the Board in performing its functions under this Act.

(5) 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 in such manner as the Treasurer may from time to time approve.

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

Loans for training purposes.

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

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

Borrowing by the Board.

23. (1) The Board may, for the purposes of the 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 three-yearly basis.

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

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

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

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

Accounts and audit.

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

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

PART V
CONTRIBUTIONS

26. Where—

- (a) an employer engages a building worker who works for the employer for three or more working days in any month;
 - (b) a building worker dies or ceases to be employed by an employer;
 - (c) during the course of employment a person commences work as a building worker;
- or
- (d) a person ceases to work as a building worker but continues in the employment of the person by whom he or she was employed as a building worker,

Returns as to
employment of
workers.

the employer must, within one month, give written notice containing the prescribed particulars to the Board.

Penalty: \$2 500.

27. (1) Every employer in the building industry must, within 21 days after the end of each month, furnish the Board with a return in a form approved by the Board containing a statement of the total of the wages (excluding any amounts by way of special rates or allowances) paid to each building worker who worked for the employer during the month for three or more working days.

Monthly returns
and contributions.

(2) The return must be accompanied by a sum equal to the prescribed percentage of the total of the wages (excluding any amounts by way of special rates or allowances) included in the return for the particular month.

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

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

or

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

(4) The Board may—

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

and

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

(5) Where—

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

(b) an employer in a return intentionally understates the amount of wages paid by the employer in a particular month,

or

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

the employer is guilty of an offence.

Penalty: \$5 000.

Recovery on default.

28. (1) Where an employer—

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

or

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

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

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

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

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

Penalty: \$5 000.

Penalty for late payment.

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

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

and

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

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

Power to require information, etc.

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

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

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

or

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

- (2) The Board may—
- (a) require that information furnished to it in writing be verified by statutory declaration;
- and
- (b) require that a person attending before it give evidence and, if it thinks fit, give that evidence on oath or by affirmation.
- (3) The Board is authorized to administer an oath or to take an affirmation for the purposes of subsection (2).
- (4) If a person—
- (a) who has been served with a notice to furnish information to the Board, or to produce any books, documents or records to the Board, fails without reasonable excuse to comply with the notice;
 - (b) who has been served with a notice to attend before the Board fails without reasonable excuse to attend in compliance with the notice;
- or
- (c) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

the person is guilty of an offence.

Penalty: \$1 000.

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

(6) In this section—

“prescribed matter” means—

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

and

- (b) any other matter prescribed by the regulations.

31. A contribution 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. Recovery of contributions.

32. If a contribution is overpaid, the Board must refund the amount of the overpayment. Refund of overpayments.

PART VI APPEALS

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

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

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. Appeals.

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

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

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

Powers of
Tribunal.

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

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

and

- (d) require any person appearing before the Tribunal to answer any relevant questions put by the Tribunal, or any person appearing before the Tribunal.

(2) If a person—

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

or

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

the person is guilty of an offence.

Penalty: \$2 500.

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

Practice and
procedure.

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

Effect of pending
appeal.

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

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

PART VII
MISCELLANEOUS

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—

Reciprocal
arrangements
with other States
and Territories.

(a) long service entitlements for building 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.

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

Powers of
inspection.

(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 contributions under this Act to be accurately assessed.

Penalty: \$1 000.

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

Penalty: \$1 000.

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

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

or

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

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

Penalty: \$1 000.

Service of documents.

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

(a) personally;

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

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

or

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

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

(3) In this section—

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

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

or

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

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

Annual report.

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

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

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

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

Offences.

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

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

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

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

Evidentiary provision.

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

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

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

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

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

or

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

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

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

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

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

and

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

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

Expiation of
offences.

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

Section 19

Section 26

Section 27.

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

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

Section 19—\$100

Section 26—\$200

Section 27—\$250.

Regulations.

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

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

(a) require employers to register with the Board;

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

and

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

FIRST SCHEDULE
BUILDING OCCUPATIONS

Asbestos cement fixer
Brick layer
Bridge and wharf carpenter
Builders labourer
Carpenter
Decorator
Drainer
Electrical worker who performs installation work
Gas fitter
Glazier
Joiner
Painter
Plasterer
Plumber
Roof tiler
Slater
Sprinkler pipe-fitter
Stonemason
Terrazzo worker
Tile layer
Tuck pointer
Welder

SECOND SCHEDULE
BUILDING WORKERS
AWARDS AND AGREEMENTS

State

Building and Construction Workers (South Australia) Award
Building Trades (South Australia) Construction Award
Carpenters and Joiners (General Construction) Award
Electrical Contracting Industry (South Australia) Award
Metal Industry (South Australia) Award
Plumbers and Gasfitters (South Australia) Award
Stonemasons and Monumental Workers Award

Federal

Building Construction Employees and Builders Labourers Award
Carpenters and Joiners Award
Electrical Contracting Industry Award (South Australia)
Glass Merchants and Glazing Contractors (South Australia) Award
National Building Trades Construction Award
Plumbers and Gasfitters (Southern States) Agreement
Sprinkler Pipe-Fitters Award

THIRD SCHEDULE

TRANSITIONAL PROVISIONS

1. Subject to this schedule, any effective service entitlement accrued, determined or credited under the repealed Act will be presumed to have accrued under this Act.

2. (1) Where—

(a) a person claims to have an effective service entitlement that accrued before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982; and

(b) (i) that entitlement was not the subject of a determination of the Board made before the commencement of this Act;

or

(ii) the person has not, immediately before the commencement of this Act, applied to the Board for a determination of that entitlement,

the person must apply to the Board within six months after the commencement of this Act for a determination of that entitlement.

(2) A determination of the Board on an application under subclause (1) has effect according to its terms.

(3) If a person claiming to have an effective service entitlement to which subclause (1) applies fails to make an application within the period allowed by that subclause, the person ceases to have any effective service entitlement in relation to a period of employment before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982.

3. (1) Where—

(a) a person is credited with effective service (whether under the repealed Act or on application under this schedule) in respect of service before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982; and

and

(b) contributions have not been paid by the person who was the employer in respect of that period of service,

the Board is entitled to recover from that employer an amount assessed or estimated by the Board as the prescribed percentage of the total wages paid for that service.

(2) An amount payable under subclause (1) may, if the Board so allows, be paid by instalments over a period not exceeding five years.

4. (1) Where—

(a) a worker had, immediately before the commencement of this Act, an effective service entitlement under the repealed Act;

(b) the worker is not, at the commencement of this Act, a building worker within the meaning of this Act;

and

(c) the worker is, at the commencement of this Act, in employment,

any effective service entitlement credited under the repealed Act in respect of service with the worker's employer at the commencement of this Act will be credited to the worker under the Long Service Leave Act, 1987 (and cancelled under this Act).

(2) Where—

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

and

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

the person's employer is entitled to—

(c) a refund of any amounts paid by the employer to the Board under the repealed Act in respect of that person;

and

(d) interest on those amounts calculated in accordance with the regulations.

5. 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.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor