

**BUILDING AND CONSTRUCTION INDUSTRY LONG
SERVICE PAYMENTS BILL, 1985**

EXPLANATORY NOTE

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

The Local Government (Building and Construction Industry Long Service Payments) Amendment Bill, 1985, is cognate with this bill.

The object of this bill is to repeal the Building and Construction Industry Long Service Payments Act, 1974 ("the former Act") and to enact new provisions dealing with long service payments for workers engaged in the building and construction industry.

The principal changes effected by the proposed Act are—

- (a) to provide that the scheme is to be financed by a levy on the erection of buildings and other structures instead of by employers; and
- (b) to simplify the basis on which workers obtain service credits and the basis on which long service payments are made.

The bill contains the following provisions:—

PART I.

PRELIMINARY.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for commencement on a date to be proclaimed.

Clause 3 is the interpretation provision and contains definitions of "building and construction industry" and "building and construction work" and "worker". Those definitions are similar to those contained in the former Act. In addition, a definition of "standard pay" has been inserted to simplify and standardise payments to workers and the allocation of service credits to subcontract workers.

PART II.

ADMINISTRATION.

DIVISION 1.—*Building and Construction Industry Long Service Payments Corporation.*

Clause 4 provides for the constitution of a Corporation to be known as the "Building and Construction Industry Long Service Payments Corporation" ("the Corporation") and provides for the affairs of the Corporation to be managed by the Secretary of the Department of Industrial Relations. The Corporation is a continuation of the Corporation under the former Act.

Clause 5 specifies the general power of the Corporation in relation to the purchase or lease of premises, the making of contracts, etc.

Clause 6 provides for the employment of staff under the Public Service Act, 1979, and the employment of casual employees for the purposes of the proposed Act.

Clause 7 authorises the Corporation to delegate its functions.

DIVISION 2.—Building and Construction Industry Long Service Payments Committee.

Clause 8 and Schedule 1 constitute a Building and Construction Industry Long Service Payments Committee ("the Committee") consisting of the Chairperson and 6 other members appointed by the Minister.

Clause 9 specifies the functions of the Committee. Generally, in addition to its advisory role, the Committee is to provide an avenue of appeal against decisions of the Corporation arising in the administration of the proposed Act.

DIVISION 3.—Financial provisions.

Clause 10 provides for the establishment of the "Building and Construction Industry Long Service Payments Fund" ("the Fund").

Clause 11 makes provision with respect to the investment of the Fund.

Clause 12 specifies the financial year of the Corporation.

Clause 13 empowers the Corporation to borrow money.

Clause 14 provides for periodic actuarial investigations of the Fund and, in particular, requires such an investigation to be carried out within 6 months and within 18 months of the commencement of the proposed Act.

PART III.

REGISTRATION OF WORKERS AND SERVICE CREDITS.

DIVISION 1.—Register of workers.

Clause 15 requires the Corporation to keep a register of workers with particulars of the number of days' service in the building and construction industry with which each worker is credited and with other relevant particulars.

DIVISION 2.—Registration of workers.

Clause 16 deals with applications by workers for registration.

Clause 17 requires the Corporation to approve or refuse an application for registration.

Clause 18 makes provision with respect to the date on which a worker is deemed to be registered, including provision for the backdating of registration.

Clause 19 provides for the cancellation of the registration of a registered worker and, in particular, requires the cancellation of registration where a registered worker has not been credited with any service for a period of at least 4 consecutive years.

DIVISION 3.—*Service Credits.*

Clause 20 requires, for the purposes of allocating service credits, an employer of contract of employment workers to furnish periodically a certificate of service specifying among other things the period of employment of each worker in the building and construction industry. Employers are no longer required to submit detailed returns of each day's service of their employees.

Clause 21 enables a subcontract worker, for the purposes of obtaining service credits, to furnish periodically claims in respect of building and construction work performed by the subcontract worker in the building and construction industry.

Clause 22 provides for the allocation of service credits to contract of employment workers. Generally a worker obtains 220 days' service for each year of full time building and construction work performed by the worker. Any other period of work is credited on a pro rata basis.

Clause 23 provides for the allocation of service credits to subcontract workers. Generally subcontract workers are entitled to 220 days' service each year in which their annual income from building and construction work exceeds the prescribed minimum annual income. Service credits are allocated on a pro rata basis where the annual income of the subcontract worker is less than the prescribed minimum annual income or where the subcontract worker has also been engaged under a contract of employment during the relevant year.

Clause 24 places limitations on the number of service credits that a registered worker may obtain in any one year.

Clause 25 requires the Corporation to notify registered workers each year of the number of days with which the workers are credited and enables objections to be made to the accuracy of any such notice.

Clause 26 makes it an offence for a person to make a false or misleading statement in or in connection with a certificate of service, claim for service credits or an objection to the accuracy of a notice of service credits.

PART IV.

LONG SERVICE PAYMENTS.

Clause 27 is an interpretation provision. For the purposes of the Part a worker is deemed to have 1 year's service credits for every 220 days' service with which the worker is credited in the register of workers.

Clause 28 specifies the circumstances in which a worker or the personal representative of a deceased worker is entitled to a long service payment. Generally a payment is made after a worker has 15 years' service credits or after a shorter period of service credits if the worker reaches the retiring age, ceases work in the industry or is totally incapacitated. The entitlement is the same as that under the former Act.

Clause 29 makes provision with respect to the amount of a long service payment. The amount of the payment is similar to the amount payable under the former Act. However, as a consequence of the removal of provision for employers to notify the amount paid to workers from time to time, the long service payment is calculated on a standard rate of pay for all workers.

Clause 30 provides that a long service payment is not payable in certain circumstances.

Clause 31 provides that a worker is not entitled to both a long service payment under the proposed Act and benefits under the Long Service Leave Act, 1955, in respect of the same period of service.

Clause 32 provides for a payment to be made to an employer of a worker who takes a benefit under the Long Service Leave Act, 1955, instead of a long service payment under the proposed Act.

PART V.

LONG SERVICE LEVIES.

Clause 33 is an interpretation provision. Under that provision a reference in Part V to the erection of a building includes a reference to the erection or alteration of, or addition to, a building or structure.

Clause 34 imposes a levy on the erection of buildings to finance the scheme established by the proposed Act. The levy is not payable by employers (as under the former Act) but is payable as referred to in clause 37.

Clause 35 specifies that the rate of the long service levy is such rate (not exceeding 0.6 per cent of the cost of erecting the building) as may be prescribed by the regulations.

Clause 36 requires a long service levy to be paid before work is commenced on the erection of a building.

Clause 37 specifies that the person who makes the application for council's approval for the erection of a building is liable to pay the long service levy, but if there is no such person, the person for whom the building is being erected is liable to pay.

Clause 38 provides that a person who contracts to erect a building for the Crown or a statutory body representing the Crown is liable to pay the long service levy. Where there is no such person and the Crown or such body erects a building, subcontractors are liable to pay the levy, but in any such case, each subcontractor is only liable to pay a levy on the cost of the subcontract work.

Clause 39 makes it an offence for failing to pay a long service levy.

Clause 40 makes provision for the determination of the cost of erecting a building in respect of which a long service levy is payable.

Clause 41 requires supplementary payments of long service levies where the actual cost of erecting a building exceeds the amount determined at the time the long service levy was payable.

Clause 42 provides for a refund of long service levies where the building is not erected or the actual cost of erecting the building is less than the amount determined at the time the long service levy was payable.

Clause 43 enables long service levies to be paid by instalments in certain circumstances.

Clause 44 enables the Corporation to appoint agents for the collection of long service levies.

Clause 45 provides for the issue of evidentiary certificates with respect to the payment of long service levies.

Clause 46 provides for the payment of interest on overdue long service levies and enables the Corporation to waive or reduce interest payable or extend the due date for payment.

Clause 47 provides for the recovery of unpaid long service levies.

Clause 48 provides that the payment of penalties under the proposed Act does not relieve a person from the liability to pay a long service levy.

PART VI.

APPEALS TO COMMITTEE.

Clause 49 enables a person to appeal to the Committee against a decision of the Corporation to refuse an application for registration or to cancel the person's registration.

Clause 50 enables a person to appeal to the Committee against a decision of the Corporation to refuse to accept or consider an objection against the accuracy of a notice of the person's credits in the register of workers.

Clause 51 enables a person to appeal to the Committee against a decision of the Corporation, for the purposes of an assessment of unpaid long service levies, as to the cost of erecting a building or as to the date on which work on the erection of a building commenced.

Clause 52 enables a person to appeal to the Committee against a decision of the corporation in relation to the waiving or reducing of interest payable on unpaid long service levies or the extension of the due date for their payment.

Clause 53 enables appeals to the Committee to be heard or heard and determined by 2 or more members of the Committee.

Clause 54 makes general provision with respect to appeals, including the time within which they may be made.

PART VII.

MISCELLANEOUS.

Clause 55 makes provision similar to that contained in the former Act for reciprocal agreements between the States and Territories with respect to long service payments to workers.

Clause 56 requires employers and subcontract workers to keep such books and records as may be prescribed by the regulations.

Clause 57 provides for the service of notices and other documents.

Clause 58 empowers persons authorised by the Corporation to enter premises (other than residential premises), to require the production of books and to records and to make examinations and inquiries for the purposes of the proposed Act.

Clause 59 prohibits unauthorised disclosure of information of manufacturing or commercial secrets obtained in connection with the administration or execution of the proposed Act.

Clause 60 provides for the authentication of certain documents by the Corporation.

Clause 61 enables the Corporation to recover charges, etc., as a debt.

Clause 62 protects the Minister, the chief executive officer of the Corporation, any member of the Committee and certain other persons from personal liability.

Clause 63 provides that, in certain circumstances, the director of a corporation or any person concerned in its management is guilty of an offence if the corporation contravenes the proposed Act or the regulations thereunder.

Clause 64 provides for summary proceedings for offences against the proposed Act and the regulations thereunder.

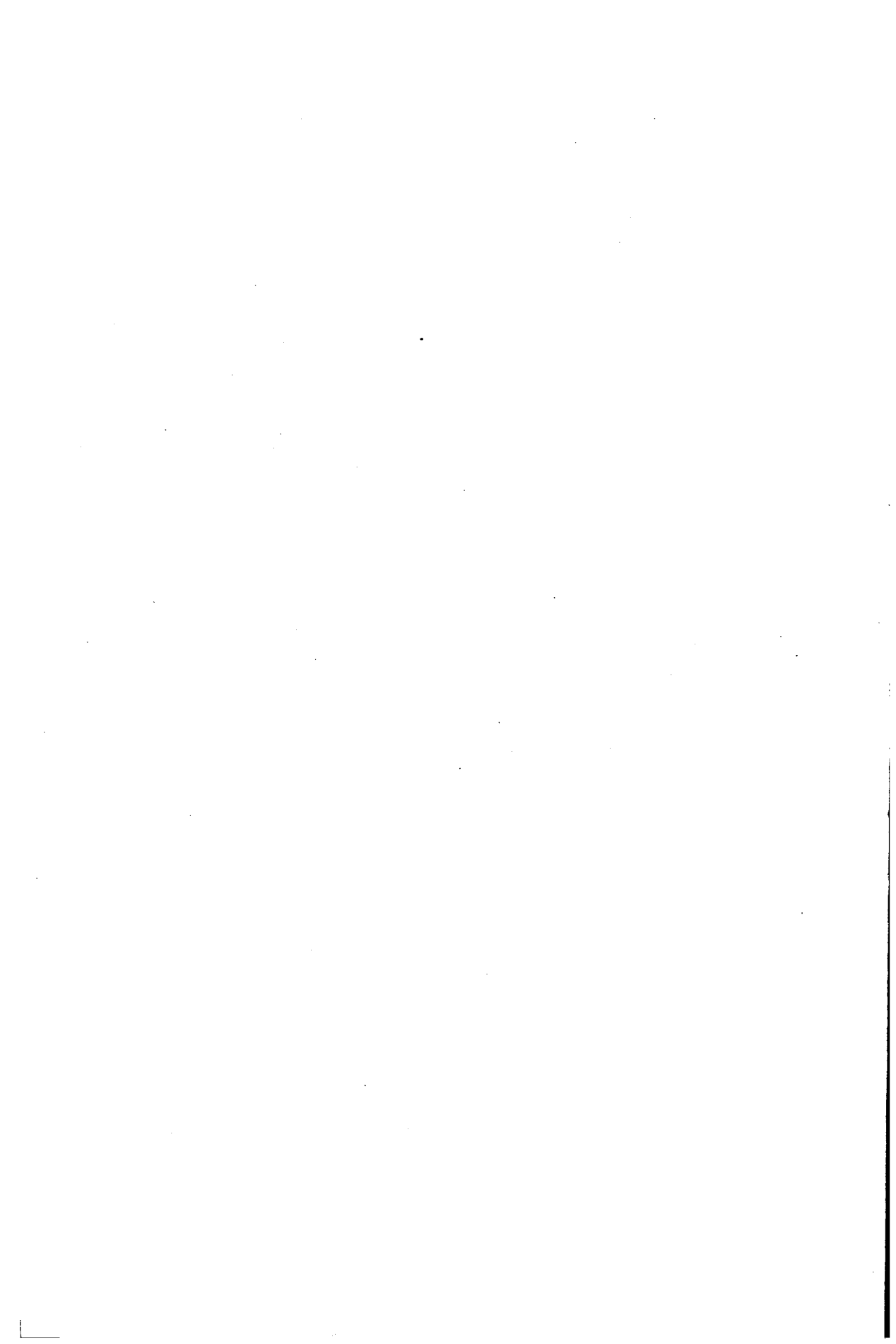
Clause 65 empowers the Governor to make regulations.

Clause 66 and Schedule 3 repeal the former Act and enactments amending the former Act.

Clause 67 and Schedule 4 enact savings, transitional and other provisions. In particular—

- (a) special provision is made to enable subcontract workers to obtain credits for service under the proposed Act for the year ending 30th June, 1985; and
 - (b) the obligation of employers to pay long service charges in respect of building and construction work performed by their employees may be continued by the regulations in respect of buildings not completed at the commencement of the proposed Act, unless the employer makes a payment in the nature of a long service levy of such amount as may be agreed upon between the employer and the Corporation.
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BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS BILL, 1985

NEW SOUTH WALES.

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