

Long Service Leave (Building and Construction Industry) Ordinance 1981

No. 23 of 1981

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation

PART II—ADMINISTRATION

Division 1—The Board

4. Building and Construction Industry Long Service Leave Board
5. Independence of the Board
6. Functions of the Board
7. Powers of the Board
8. Constitution of the Board
9. Acting members
10. Resignation
11. Termination of appointment
12. Fees and allowances
13. Meetings
14. Disclosure of interest
15. Minister may require information
16. Protection of members

Division 2—The Registrar and Inspectors

17. The Registrar and Deputy Registrar
18. Inspectors
19. Powers of inspector

Division 3—Finances

20. Moneys of the Board
21. Application of moneys
22. Borrowing by the Board
23. Contracts
24. Triennial investigation by Actuary
25. Refunds

PART III—REGISTRATION OF EMPLOYERS

26. Employers Register
27. Application for registration
28. Registration
29. Certificate of registration
30. Change of address to be notified

PART IV—REGISTRATION OF EMPLOYEES AND CONTRACTORS**Section**

31. Employees and Contractors Register
32. Application for registration by employee or contractor
33. Application for registration by persons not engaged in industry
34. Application by employer for registration of employee
35. Extension of time
36. Registration

PART V—PERIODIC NOTICES AND PAYMENTS

37. Periodic notices and payments by employers
38. Periodic notices and payments by registered contractors
39. Employers to keep records

PART VI—ENTRIES IN THE EMPLOYEES AND CONTRACTORS REGISTER

40. Particulars to be entered in Employees and Contractors Register
41. Determination and entry of ordinary remuneration by Board
42. Service credits
43. Bonus credits for employees and contractors
44. Bonus credits for apprentices
45. Removal of names from Employees and Contractors Register

PART VII—ANNUAL CERTIFICATES

46. Annual certificates for employees and contractors
47. Annual certificates for employers
48. Objection to matter specified in annual certificate

PART VIII—LONG SERVICE LEAVE AND PAYMENTS

49. Long service leave
50. Year of continuous service
51. Amount of leave
52. Grant of leave
53. Entitlement to payment in lieu of leave
54. Payment in lieu of leave on retirement
55. Payment for leave
56. Payment in lieu of leave
57. Amount of payment for, or in lieu of, leave
58. Public holidays to count as leave

PART IX—MISCELLANEOUS

59. Appeals
60. Inspection of Register
61. No contracting out
62. Minister may approve State and Territory laws
63. Benefits under Long Service Leave Ordinance
64. Arrangements with States and other Territories
65. Payments by Board to State or Territory authorities
66. Regulations

Long Service Leave (Building and Construction Industry) Ordinance 1981

No. 23 of 1981

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 3 September 1981.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

MICHAEL HODGMAN
Minister of State for the Capital Territory

An Ordinance to provide for long service leave for employees and contractors in the building and construction industry and for other related purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Long Service Leave (Building and Construction Industry) Ordinance 1981*.¹

Commencement

2. (1) This Part and Part II shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

(2) The remaining Parts of this Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice published in the *Gazette*.

Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—
“agreement” includes an industrial agreement made in pursuance of the *Conciliation and Arbitration Act 1904*;

“approved law”, in relation to a State or another Territory, means a law of that State or Territory—

(a) that provides for long service leave benefits for employees or contractors engaged in the building and construction industry; and

(b) that is approved by the Minister under section 62;

“award” means an award made under the *Conciliation and Arbitration Act 1904* or a determination;

“award holiday” means a day that is, by virtue of an award or agreement, a holiday for persons employed in the building and construction industry;

“Board” means the Building and Construction Industry Long Service Leave Board established by section 4;

“building and construction industry” means the industry of carrying out the construction, reconstruction, renovation, alteration, demolition or maintenance of—

- (a) buildings;
- (b) fences;
- (c) swimming pools;
- (d) roadworks, railways, airfields or other works for the carriage of persons, animals or vehicles;
- (e) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or water-course for the purpose of navigation;
- (f) works for the storage or supply of water or for the irrigation of land;
- (g) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (h) bridges, viaducts, aqueducts or tunnels;
- (i) pipelines;
- (j) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
- (k) structures, fixtures or works for use in any building or works referred to in paragraphs (a) to (j) inclusive;
- (l) navigational lights, beacons or markers;
- (m) works for the drainage of land;
- (n) works for the storage of liquids, other than water, or of gases;
- (o) works for the transmission of electric power; and
- (p) works for the transmission of wireless or telegraphic communications,

and includes the process of pile driving and the preparation of the site for any building or other works referred to in paragraphs (a) to (p) inclusive;

“building and construction work” means work performed in the Territory in the building and construction industry—

- (a) of the kind usually performed by, or by an apprentice or assistant to, a carpenter, joiner, bricklayer, plasterer, slater,

Long Service Leave (Building and Construction Industry) No. 23, 1981

roof-tiler, tilelayer, painter, decorator, bridge and wharf carpenter, stonemason, plumber, gas fitter, asbestos cement fixer, drainer, signwriter, crane driver, electrician, plant operator or builders' labourer;

- (b) of the kind usually performed by a construction labourer;
- (c) under a contract of employment by a person acting as a foreman, sub-foreman or leading hand in the supervision of the performance of any work of the kind referred to in paragraph (a) or (b) or as a clerk of works or construction supervisor; or
- (d) of a prescribed kind;

"Chairman" means the Chairman of the Board;

"continuous service" means continuous service in the building and construction industry by an employee, whether with a single employer or with different employers, or by a contractor, and includes—

- (a) a period of long service leave;
- (b) a period of annual leave exceeding 4 weeks in any one year, being a period in respect of which the employee is, or is entitled to be, paid ordinary remuneration by his employer;
- (c) a period of leave, not exceeding 110 days in any one year, taken on account of illness or injury and in respect of which the employee is, or is entitled to be, paid ordinary remuneration by his employer;
- (d) a period during which the service of the employee is interrupted or terminated by his employer with the intention of avoiding the granting of long service leave; and
- (e) the period of an apprenticeship served by an employee or contractor in the building and construction industry;

"contractor" means a person, other than an employee or an apprentice, who performs building and construction work for fee or reward on his own account;

"Deputy Registrar" means the Deputy Long Service Leave Registrar;

"determination" has the same meaning as in the *Industrial Board Ordinance 1936*;

"employee" means a person employed, other than by the Commonwealth, the Australian National University or the Canberra College of Advanced Education, in the building and construction industry and includes—

- (a) a person who is remunerated at piece-work rates; and
- (b) an apprentice,

but does not include a part-time employee;

“Employees and Contractors Register” means the Long Service Leave (Building and Construction Industry) Register of Employees and Contractors established in pursuance of section 31;

“employer” means an employer, other than the Commonwealth, the Australian National University or the Canberra College of Advanced Education, engaged in the building and construction industry;

“Employers Register” means the Long Service Leave (Building and Construction Industry) Register of Employers established in pursuance of section 26;

“Long Service Leave Ordinance” means the *Long Service Leave Ordinance 1976*;

“member” means a member of the Board, and includes the Chairman;

“ordinary remuneration” means—

(a) in relation to an employee, the sum of—

(i) the salary or wages payable to the employee;

(ii) any allowances payable to the employee in respect of skill or qualifications; and

(iii) any amounts payable to the employee under a bonus or incentive scheme, being amounts that are usually paid to the employee with his salary or wages; and

(b) in relation to a contractor, the amount paid or payable to the contractor in respect of the performance by him of building and construction work, but does not include any amount paid or payable to the contractor for reimbursement of any costs incurred by him, or for any materials provided by him, in performing that work;

“prescribed retiring age” means—

(a) in relation to a registered employee—the retirement age prescribed in an award that applies in relation to that employee or, where no such age is so prescribed, the age of 65 years; and

(b) in relation to a registered contractor—the age of 65 years;

“registered contractor” means a contractor registered under this Ordinance;

“registered employee” means an employee registered under this Ordinance;

“registered medical practitioner” means a medical practitioner who is registered under the *Medical Practitioners Registration Ordinance 1930* or under the law of a State or another Territory that provides for the registration of medical practitioners;

“Registrar” means the Long Service Leave Registrar;

*Long Service Leave (Building and Construction
Industry) No. 23, 1981*

“salary or wages” includes payments by way of commission, but does not include—

- (a) payments in respect of overtime;
- (b) payments at penalty rates of pay; or
- (c) allowances which, by virtue of an award or agreement, are not to be taken into account in determining a rate of remuneration in respect of overtime;

“working day” means a day other than a Saturday, a Sunday or a day that is a public holiday or an award holiday.

(2) For the purposes of this Ordinance, a person shall not be deemed to be not an employee by reason only of the fact that the person is remunerated wholly or partly by commission.

(3) For the purpose of calculating an employee’s period of service in the building and construction industry, any interruption or termination of service by the employee or the employer, other than with the intention of avoiding the granting of long service leave, does not break the continuity of service and is not to be taken into account in calculating the total period of service if the employee returns to the service of that employer or commences service with another employer within a period of 4 years after the date on which the service was so interrupted or terminated, as the case may be.

(4) For the purpose of calculating a contractor’s period of service in the building and construction industry, any interruption of service by the contractor does not break the continuity of service and is not to be taken into account in calculating the total period of service if the contractor recommences service within a period of 4 years after the date on which the service was so interrupted.

(5) For the purposes of this Ordinance, work performed by an employee or a registered contractor outside the Territory shall be deemed to be building and construction work if—

- (a) that work would, if it were performed in the Territory, be building and construction work; and
- (b) the employer of that employee, or that contractor, pays to the Board the prescribed amount under section 37 or 38, as the case may be, in relation to the ordinary remuneration paid or payable to the employee or contractor in respect of the performance by him of that work.

PART II—ADMINISTRATION

Division 1—The Board

Building and Construction Industry Long Service Leave Board

4. (1) There is hereby established a Board by the name of the Building and Construction Industry Long Service Leave Board.

(2) The Board—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) is capable of acquiring, holding and disposing of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

Independence of the Board

5. The Board shall not be, and shall not be regarded as, for any purpose, the servant or agent of the Executive Government of the Commonwealth.

Functions of the Board

6. The functions of the Board are—

- (a) to administer the scheme of long service benefits established by this Ordinance in respect of employees and contractors engaged in the building and construction industry;
- (b) to make recommendations to the Minister as to any change that the Board considers should be made to the rate of payments made by employers and registered contractors under this Ordinance;
- (c) to make recommendations to the Minister as to the laws of a State or another Territory that the Board considers suitable for approval by the Minister under section 62;
- (d) to make payments in accordance with this Ordinance; and
- (e) to establish and maintain the Employers Register and the Employees and Contractors Register in accordance with this Ordinance.

Powers of the Board

7. The Board has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions under this Ordinance and in particular, without limiting the generality of the foregoing—

- (a) to take any necessary action to recover moneys payable to the Board and such debts as may be incurred against the Board;
- (b) to enter into agreements for the purpose of borrowing moneys in accordance with this Ordinance;
- (c) to incur any necessary legal and other costs in proceedings by or against the Board;
- (d) to refund any moneys that are refundable under this Ordinance; and
- (e) with the approval of the Minister, to employ persons.

Constitution of the Board

8. (1) The Board shall consist of—

- (a) the Chairman;
- (b) a member representing employer organisations selected by the Minister from a panel comprising 2 persons nominated by the Master Builders' Association of the A.C.T., 2 persons nominated by the Housing Industry Association A.C.T./Southern New South Wales Division and 2 persons nominated by the Confederation of A.C.T. Industry; and
- (c) a member representing employee organisations selected by the Minister from a panel of 3 persons nominated by the Trades and Labour Council of the A.C.T.

(2) Each member of the Board—

- (a) shall be appointed by the Minister;
- (b) shall, subject to this Ordinance, hold office for such period, not exceeding 5 years, as is specified in the instrument of his appointment; and
- (c) shall be eligible for re-appointment.

(3) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

Acting members

9. (1) The Minister may—

- (a) appoint a person selected by him from the panel referred to in paragraph 8(1)(b) to act as the member referred to in that paragraph; and
- (b) appoint a person selected by him from the panel referred to in paragraph 8(1)(c) to act as the member referred to in that paragraph.

(2) A person appointed to act as a member under sub-section (1) shall so act—

- (a) during a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is absent from duty or from the Territory or, for any other reason, is unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(3) The Minister may at any time terminate the appointment of a person appointed to act in accordance with sub-section (1).

(4) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) Subject to this section, while a person is acting as a member of the Board in accordance with this section, he has, and may exercise, all the powers and may perform all the functions of the member and shall be deemed to be a member for the purposes of sections 13 and 14.

(6) A person appointed to act as a member referred to in paragraph 8 (1) (c) shall not preside at any meeting of the Board at which the Chairman and that member are not present.

(7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Resignation

10. (1) A member of the Board may resign his office by writing signed by him and delivered to the Minister.

(2) Where a member of the Board resigns his office, his resignation shall take effect on the day on which the instrument of his resignation is delivered to the Minister in accordance with sub-section (1) or on such later date as is specified in the instrument.

Termination of appointment

11. (1) The Minister may terminate the appointment of a member of the Board by reason of misbehaviour or physical or mental incapacity.

(2) If a member of the Board—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is convicted in Australia of an offence punishable by imprisonment for one year or longer; or
- (c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board,

the Minister shall terminate the appointment of the member.

Fees and allowances

12. The Board is a prescribed authority for the purposes of the *Remuneration Ordinance 1976*.

Meetings

13. (1) The Chairman shall convene such meetings of the Board as he considers necessary for the performance of its functions.

(2) The Chairman shall preside at all meetings of the Board at which he is present.

(3) At a meeting of the Board at which the Chairman is not present, the member referred to in paragraph 8 (1) (c) shall preside.

(4) At a meeting of the Board at which the Chairman and the member referred to in paragraph 8 (1) (c) are not present, the member referred to in paragraph 8 (1) (b) shall preside.

(5) Subject to this section, the procedures for convening meetings of the Board and for the conduct of business by the Board shall be as the Board determines.

Disclosure of interest

14. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines—

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter.

(3) For the purpose of the making of a determination by the Board under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making by the Board of the determination.

(4) Where a member fails, without reasonable excuse, to comply with the requirements of this section, the Minister shall terminate the appointment of the member.

Minister may require information

15. The Board shall furnish to the Minister such information relating to the exercise of its powers and the performance of its functions under this Ordinance as the Minister requires.

Protection of members

16. An action or proceeding, civil or criminal, does not lie against a member of the Board for or in respect of any act or thing done in good faith by the member in his capacity as a member.

Division 2—The Registrar and Inspectors

The Registrar and Deputy Registrar

17. (1) The Minister may appoint a person who is an officer or employee within the meaning of the *Public Service Act* 1922 to be the Long Service Leave Registrar.

(2) The Registrar shall perform such duties as are required by this Ordinance or as the Board directs.

(3) The Minister may appoint a person who is an officer or employee within the meaning of the *Public Service Act* 1922 to be the Deputy Long Service Leave Registrar.

(4) When the Registrar is absent from duty or from the Territory, the Deputy Registrar may exercise the powers, and shall perform the duties, of the Registrar under this Ordinance.

(5) Subject to sub-section (4), the Deputy Registrar shall perform such duties as the Registrar directs.

(6) Where, in accordance with sub-section (4), the Deputy Registrar has exercised a power, or performed a duty, of the Registrar, this Ordinance applies as if the power had been exercised or the duty performed by the Registrar.

Inspectors

18. (1) The Secretary may appoint such inspectors as he considers necessary for the purposes of this Ordinance.

(2) A person shall not be appointed under this section unless he is an officer or employee within the meaning of the *Public Service Act* 1922.

(3) A person appointed under this section shall, subject to this Ordinance, perform such duties for the purposes of this Ordinance as the Secretary directs.

(4) The Secretary shall issue to each person appointed under this section a certificate certifying that that person is an inspector for the purposes of this Ordinance.

(5) In this section, "the Secretary" means the Secretary to the Department of the Capital Territory.

Powers of inspector

19. (1) An inspector may, at any reasonable hour of the day, enter the premises of an employer, or of a person who he has reasonable grounds for believing to be an employer, and—

- (a) inspect any records, books or documents which are required by this Ordinance to be kept by an employer; and
- (b) require any person at the premises to furnish him with any information, records, books or documents, or copies of any records, books or documents, that are in the possession of the person or to which the person has access and that relate to the rights, duties or obligations under this Ordinance of the employer or of any person employed by the employer.

(2) An inspector who enters upon premises in pursuance of this section is not authorized to remain on the premises, and a person is not required to comply with a requirement made by an inspector under paragraph (1) (b), if, on request by the occupier, or the person in charge, of the premises, the inspector does not produce the certificate issued to him under sub-section 18 (4).

Division 3—Finances

Moneys of the Board

20. The moneys of the Board shall consist of—

- (a) moneys received by the Board in pursuance of sections 37 and 38;
- (b) income derived from the investment of moneys of the Board;
- (c) moneys borrowed by the Board;
- (d) moneys paid to the Board in pursuance of a reciprocal arrangement made under section 64; and
- (e) any other moneys paid to the Board in accordance with this Ordinance.

Application of moneys

21. The moneys of the Board shall be applied only—

- (a) in payment or discharge of the costs, expenses or other obligations of the Board under this Ordinance; and
- (b) in payment of remuneration and allowances payable to any person appointed or employed under this Ordinance.

Borrowing by the Board

22. (1) The Board may from time to time borrow moneys in such amounts, and on such terms and conditions, as the Treasurer approves.

(2) The Board may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(3) The Board shall not borrow otherwise than in accordance with this section.

Contracts

23. The Board shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Board of an amount exceeding \$50,000.

Triennial investigation by Actuary

24. (1) An investigation as to the state and sufficiency of the moneys of the Board shall be made by the Australian Government Actuary at such times as the Board requests but in any event not later than the expiration of a period of 3 years after the commencement of this Ordinance and thereafter at the expiration of each succeeding period of 3 years.

(2) The Australian Government Actuary shall report to the Board the result of his investigation, and shall state whether, in his opinion, any reduction or increase is necessary in the rates of periodic payments payable to the Board by employers and registered contractors under this Ordinance.

(3) The Australian Government Actuary shall forward to the Minister a copy of each report made by him under this section.

Refunds

25. Where the Board finds that there has been an overpayment of any amount payable to the Board under this Ordinance, the Board shall cause to be paid out of the moneys of the Board to the person who made the overpayment a refund of the amount by which the amount payable was so overpaid.

PART III—REGISTRATION OF EMPLOYERS

Employers Register

26. The Board shall establish and maintain a register called "The Long Service Leave (Building and Construction Industry) Register of Employers".

Application for registration

27. (1) A person who is an employer in the building and construction industry shall apply to the Registrar in accordance with this section for registration under this Ordinance.

Penalty: \$1,000.

(2) An application under sub-section (1) shall—

(a) be in writing signed by the applicant;

(b) contain particulars of—

(i) the name and address of the applicant;

- (ii) the nature of the work in which the applicant is engaged as an employer;
 - (iii) the names of all persons employed by the applicant in the building and construction industry; and
 - (iv) such other matters, if any, as are prescribed; and
- (c) be lodged with the Registrar within 3 months after the date of commencement of this Part or within 1 month after the applicant becomes an employer, whichever is the later, or within such further time as the Registrar allows.

Registration

28. (1) Where the Registrar is satisfied that a person who has applied for registration under section 27 is an employer in the building and construction industry, the Registrar shall cause the person to be registered.

(2) The registration of a person under sub-section (1) shall be effected by entering in the Employers Register—

- (a) the name and address of the person;
- (b) the date on which the registration takes effect; and
- (c) such other particulars as the Board thinks fit.

(3) The registration of a person under this section shall take effect as from the date on which the application for registration was lodged with the Registrar in pursuance of sub-section 27 (2).

Certificate of registration

29. (1) Where a person is registered under this Part the Registrar shall cause to be issued to him a certificate of registration under the hand of the Registrar.

(2) A certificate of registration issued under sub-section (1) is evidence that the person specified in the certificate was registered on the date specified in the certificate.

Change of address to be notified

30. Where a change occurs in the address of a registered employer entered in the Employers Register under sub-section 28 (2), the registered employer shall, within 1 month of the change, notify the Registrar in writing accordingly.

Penalty: \$500.

PART IV—REGISTRATION OF EMPLOYEES AND CONTRACTORS

Employees and Contractors Register

31. The Board shall establish and maintain a register called “The Long Service Leave (Building and Construction Industry) Register of Employees and Contractors”.

Application for registration by employee or contractor

32. (1) A person who—

- (a) is an employee in the building and construction industry; or
- (b) is a contractor in that industry,

may apply to the Registrar for registration under this Ordinance.

(2) An application under sub-section (1) shall—

- (a) be in writing signed by the applicant;
- (b) contain particulars of—
 - (i) the name and address of the applicant;
 - (ii) the nature of the work performed by the applicant and the date on which he commenced his current employment or work in the building and construction industry;
 - (iii) the name and address of the employer, if any, of the applicant;
 - (iv) the service of the applicant, if any, in the building and construction industry during the period of 4 years immediately preceding the date of the application, whether that service occurred before or after the commencement of this Part;
 - (v) where the applicant is credited under an approved law of a State or another Territory with a period of service in the building and construction industry—the period of service with which the applicant is so credited;
 - (vi) the period of apprenticeship, if any, served by the applicant in the building and construction industry, whether before or after the commencement of this Part; and
 - (vii) such other matters, if any, as are prescribed; and
- (c) be lodged with the Registrar within 3 months after the date of commencement of this Part or within 3 months after the applicant commences his service in the building and construction industry, whichever is the later.

Application for registration by persons not engaged in industry

33. (1) A person who is not, on the commencement of this Part, an employee or contractor in the building and construction industry but who has at any time within the period of 4 years immediately preceding that date been an employee or contractor in that industry may apply to the Registrar for registration under this Ordinance.

(2) An application under sub-section (1) shall—

- (a) be in writing signed by the applicant;
- (b) contain particulars of—
 - (i) the name and address of the applicant;

- (ii) the service of the applicant in the building and construction industry during the period of 4 years immediately preceding the commencement of this Part;
 - (iii) where the applicant is credited under an approved law of a State or another Territory with a period of service in the building and construction industry—the period of service with which the applicant is so credited; and
 - (iv) such other matters, if any, as are prescribed; and
- (c) be lodged with the Registrar within 3 months after the date of commencement of this Part.

Application by employer for registration of employee

34. (1) Where an employer employs a person in the building and construction industry and that person—

- (a) is not registered under this Ordinance; and
- (b) fails to apply for registration under section 32 within the period specified in paragraph 32 (2) (c) or within such further period, if any, as the Registrar has allowed under section 35,

the employer may at any time after the expiration of that period or that further period, as the case may be, apply to the Registrar for the registration of that person under this Ordinance.

(2) An application under sub-section (1) shall be in writing signed by the applicant and shall contain particulars of—

- (a) the name and address of the applicant;
- (b) the name and address of the employee;
- (c) the nature of the work performed by the employee and the date on which he commenced his employment with the applicant; and
- (d) such other matters, if any, as are prescribed.

Extension of time

35. The Registrar may, on application by a person who wishes to apply for registration under section 32 or 33, extend the period specified in paragraph 32 (2) (c) or paragraph 33 (2) (c), as the case may be, for such further period as the Registrar thinks fit.

Registration

36. (1) Where the Registrar is satisfied—

- (a) in relation to a person who applies for registration under section 32—that the person is an employee or contractor in the building and construction industry;

- (b) in relation to a person who applies for registration under section 33—that the person was at any time within the period of 4 years immediately preceding the commencement of this Part an employee or contractor in that industry; or
- (c) in relation to a person in respect of whom an application is made by an employer under section 34—that the person in respect of whom the application is made is an employee in that industry,

the Registrar shall cause the person to be registered.

(2) The registration of a person under sub-section (1) shall be effected by entering in the Employees and Contractors Register—

- (a) the name and address of the person;
- (b) the name and address of the employer, if any, of the person;
- (c) the date on which the registration takes effect; and
- (d) such other particulars as the Board thinks fit.

(3) Where the Registrar makes a decision refusing an application for registration under this Part, he shall, within 7 days of making that decision, cause to be given to the applicant a notice in writing setting out the terms of the decision.

(4) Where the Registrar refuses an application for registration under this Part, the applicant may appeal to the Board against the decision and, on an appeal under this section, the Board may—

- (a) confirm the decision of the Registrar; or
- (b) order that the applicant, or the person in respect of whom the application for registration is made, as the case requires, be registered.

(5) Where the Board makes a decision under sub-section (4), the Board shall, within 7 days of making that decision, prepare and furnish to the applicant a statement in writing setting out the terms of the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(6) A notice under sub-section (3) may be given, and a statement under sub-section (5) may be furnished, to an applicant by post addressed to the applicant at his address set out in the application.

(7) The registration of a person under sub-section (1), or in pursuance of an order of the Board under sub-section (4), shall take effect on the date on which the application for registration was lodged with the Registrar.

PART V—PERIODIC NOTICES AND PAYMENTS

Periodic notices and payments by employers

37. (1) Subject to this section, an employer shall, within 15 days after the expiration of the period of 2 months from the commencement of this Part or the date on which he first becomes an employer, whichever is the later, and thereafter within 15 days after the expiration of each succeeding period of 2 months, or such further period as the Board, on application by the employer, allows—

- (a) lodge with the Board a notice in accordance with sub-section (2); and
- (b) pay to the Board the prescribed amount,

in relation to that period.

Penalty: \$10,000.

(2) A notice lodged with the Board under sub-section (1) shall be in writing signed by the employer and shall contain a statement certifying that each of the employees specified in the notice performed building and construction work during the period to which the notice relates, together with particulars of—

- (a) the name and address of the employer;
- (b) the name of each employee who performed building and construction work or who was absent on paid leave during the period to which the notice relates;
- (c) the days, or parts of days, on which each of those employees performed that work or was absent on paid leave;
- (d) the amount of ordinary remuneration paid or payable by the employer to each of those employees during that period; and
- (e) such other matters, if any, as are prescribed.

(3) For the purposes of paragraph (1)(b), the prescribed amount in relation to a period of 2 months is an amount equal to 2.5% of the total of the amounts of ordinary remuneration paid or payable by the employer to his employees during that period, or, if another percentage for the purposes of this section is determined by the Minister, on the recommendation of the Board, by notice published in the *Gazette*, that other percentage of that total.

(4) Where—

- (a) an employee performs, within a period of not more than 12 months, building and construction work in the Territory; and
- (b) the employer of that employee makes payments in respect of the performance of that work to an authority established under an approved law of a State or another Territory,

the Board may, upon application by the employer, grant to the employer an exemption from payment of an amount under sub-section (1)(b) in relation to the ordinary remuneration paid or payable to the employee in respect of the performance of that work.

(5) Where an exemption is granted by the Board to an employer under sub-section (4) in respect of any work, that work shall be deemed not to be building and construction work for the purposes of this Ordinance.

Periodic notices and payments by registered contractors

38. (1) A registered contractor shall, within 15 days after the expiration of the period of 2 months from the date on which he lodges his application for registration, and thereafter within 15 days after the expiration of each succeeding period of 2 months, or such further period as the Board, on application by the registered contractor, allows—

- (a) lodge with the Board a notice in accordance with sub-section (2); and
- (b) pay to the Board the prescribed amount,
in relation to that period.

Penalty: \$2,000.

(2) A notice lodged with the Board under sub-section (1) shall be in writing signed by the registered contractor and shall contain particulars of—

- (a) the name and address of the contractor;
- (b) the nature of the work performed by him during the period to which the notice relates;
- (c) the days, or parts of days, on which he performed that work;
- (d) the ordinary remuneration paid or payable to him during that period in respect of the performance of that work; and
- (e) such other matters, if any, as are prescribed.

(3) For the purposes of paragraph (1)(b), the prescribed amount in relation to a period of 2 months is an amount equal to 2.5% of the total of the amounts of ordinary remuneration paid or payable to the registered contractor during that period in respect of the performance by him of building and construction work, or, if another percentage for the purposes of this section is determined by the Minister, on the recommendation of the Board, by notice published in the *Gazette*, that other percentage of that total.

Employers to keep records

39. (1) An employer shall, in respect of each employee employed by him, keep a record showing particulars of—

- (a) the name of the employee;
- (b) the nature of the work performed by the employee;
- (c) the ordinary remuneration of the employee;

- (d) the number of days worked in each period of 2 months by the employee;
- (e) the date on which the employee commenced service with the employer;
- (f) long service leave granted, or payment in lieu of leave made, to the employee; and
- (g) where the person ceases to be employed by the employer—the date on which he so ceased to be employed.

Penalty: \$1,000.

(2) An employer shall retain a record referred to in sub-section (1) for a period of 6 years after the date on which the service of the person to whom the record relates is terminated.

Penalty: \$1,000.

PART VI—ENTRIES IN THE EMPLOYEES AND CONTRACTORS REGISTER

Particulars to be entered in the Employees and Contractors Register

40. The Board shall cause to be entered and maintained in the Employees and Contractors Register in relation to each registered employee and registered contractor particulars of—

- (a) the period of apprenticeship, if any, served by the employee or contractor in the building and construction industry;
- (b) the number of days continuous service with which the employee or contractor is credited in accordance with this Ordinance;
- (c) the ordinary remuneration of the employee or contractor in respect of the performance by him of building and construction work;
- (d) the entitlement of the employee or contractor to long service leave;
- (e) long service leave granted to or taken by, or payment in lieu of long service leave made to, or in respect of, the employee or contractor, whether under this Ordinance or the Long Service Leave Ordinance;
- (f) where a former employee or contractor has ceased to be employed or has ceased work in the building and construction industry—the date on which he so ceased; and
- (g) such other matters, if any, as the Board thinks fit.

Determination and entry of ordinary remuneration by Board

41. (1) Where, in relation to a notice lodged with the Board by an employer under section 37, or by a registered contractor under section 38, the Board is of the opinion that the amount of ordinary remuneration specified in the notice as paid or payable to an employee or the registered contractor is insufficient or excessive by reason of the nature of the work performed by

that employee or contractor, the Board may, subject to this section, determine an amount as the ordinary remuneration of that employee or contractor in lieu of the amount so specified in the notice and shall enter that amount in the Employees and Contractors Register in relation to the employee or contractor accordingly.

(2) Where the Board makes a determination under sub-section (1), the amount determined by the Board shall be treated for the purposes of this Ordinance as the ordinary remuneration of the employee or contractor to whom the determination relates.

(3) Before making a determination under sub-section (1), the Board shall cause a notice in writing to be sent to the employer and the employee, or to the registered contractor, as the case requires, and the employer, employee or contractor, may—

- (a) within 1 month of the date of the notice, lodge a written statement with the Board relating to any matters that he wishes the Board to take into consideration in making the determination; and
- (b) appear before the Board, either in person or by a person acting on his behalf, for the purpose of making representations to the Board in relation to the making of the determination.

(4) A notice sent to a person under sub-section (2) shall be posted to the person at his address as last recorded in the Employers Register or the Employees and Contractors Register, as the case requires.

(5) Where the Board enters in the Employees and Contractors Register under sub-section (1) an amount that is greater than the amount specified in a notice lodged with the Board under section 37 or 38, the employer or registered contractor who lodged the notice shall pay to the Board an amount equal to the difference between the amount paid by him in accordance with section 37 or 38, as the case may be, and the amount that would have been payable under this Ordinance had the ordinary remuneration of the person been the amount so entered in that Register.

(6) Where the Board enters in the Employees and Contractors Register under sub-section (1) an amount that is less than the amount specified in a notice lodged with the Board under section 37 or 38, the Board shall pay to the employer or registered contractor who lodged the notice an amount equal to the difference between the amount paid by him in accordance with section 37 or 38, as the case may be, and the amount that would have been payable under this Ordinance had the ordinary remuneration of the person been the amount so entered in that Register.

Service credits

42. (1) Subject to this Ordinance, a registered employee or registered contractor shall be credited in the Employees and Contractors Register with

one day's continuous service in the building and construction industry for each working day, or part of a working day, on which he—

- (a) performs building and construction work;
- (b) is absent on annual leave during any period exceeding 4 weeks;
- (c) attends on a court in accordance with a summons to serve as a juror in proceedings before that court; or
- (d) attends on a court in accordance with a summons for the purpose of giving evidence as a witness in proceedings before that court.

(2) Subject to this Ordinance, a registered employee shall be credited in the Employees and Contractors Register with one day's continuous service in the building and construction industry—

- (a) for each working day on which the employee is absent from his employment on any paid leave granted by his employer, other than absence on annual leave or an absence referred to in paragraph (c);
- (b) where the employee is absent from his employment on account of incapacity arising out of an injury in respect of which the employee is entitled to compensation under the *Workmen's Compensation Ordinance 1951*—for each working day during the period, being a period of not more than 110 days in any one year, in which the employee is so absent; and
- (c) where the employee is absent from his employment and a registered medical practitioner certifies that in his opinion that employee is unable to perform his work on account of an illness or injury— for each working day during the period, being a period of not less than 10 days and not more than 110 days in any one year, in which the employee is so absent and in respect of which he is, or is entitled to be, paid ordinary remuneration by his employer.

(3) A registered employee or registered contractor shall not be credited—

- (a) in respect of the period commencing on the date fixed by the Minister under sub-section 2 (2) and ending on 30 June next following— with more days service than equals the number that bears to 220 the same proportion as the number of months in that period bears to 12; and
- (b) in respect of any year ending on any subsequent 30 June—with more than 220 days service in addition to any days with which the registered employee or registered contractor is credited under paragraph 42 (1) (b) during that year.

(4) A registered contractor shall not be credited in respect of any 2 or more parts of the same working day with more than one day's service.

(5) Where a registered employee or contractor is credited in the Employees and Contractors Register with a period of continuous service in

the building and construction industry of less than 10 years and the employee or contractor ceases work in the building and construction industry, other than for total incapacity, with the intention of leaving that industry permanently, the employee or contractor shall not be credited with any period of continuous service for any working day or part of a working day on which he performs building and construction work during the period of 12 months from the date on which he so ceased work.

(6) A registered employee or registered contractor shall be credited in the Employees and Contractors Register with any period of continuous service with which the employee or contractor is credited, either before or after the date fixed by the Minister under sub-section 2 (2), under an approved law of a State or another Territory.

Bonus credits for employees and contractors

43. (1) Where a person, other than an employee who is an apprentice, applies for registration under section 32 or 33 within 3 months after the date of commencement of Part IV, the person shall, upon registration, be credited in the Employees and Contractors Register with 440 days continuous service in the building and construction industry.

(2) Where a person referred to in sub-section (1) is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry that, when added to the period of 440 days referred to in that sub-section, amounts to not less than 10 years, the person shall be credited in that Register with a further period of 440 days.

(3) Where a person referred to in sub-section (1)—

(a) is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry that, when added to the period of 440 days referred to in that sub-section, amounts to not less than 495 days but less than 10 years; and

(b) ceases to work in the building and construction industry by reason of total incapacity or death, or by reason of having reached the prescribed retiring age,

the person shall be credited in that Register with a further period, being a period that bears the same proportion to 440 days as the first-mentioned period referred to in paragraph (a) bears to 10 years.

(4) Where a person referred to in sub-section (1)—

(a) is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry that, when added to the period of 440 days referred to in that sub-section, amounts to not less than 5 years but less than 10 years; and

- (b) ceases to work in the building and construction industry, other than by reason of total incapacity or death or by reason of having reached the prescribed retiring age, with the intention of leaving that industry permanently,

the person shall be credited in that Register with a further period, being a period that bears the same proportion to 440 days as the first-mentioned period referred to in paragraph (a) bears to 10 years.

Bonus credits for apprentices

44. (1) Where a person who is an apprentice—

- (a) applies for registration under section 32 or 33 within 3 months after the commencement of Part IV; and
- (b) having been registered under this Ordinance, completes the period of his apprenticeship, or ceases to work in the building and construction industry by reason of total incapacity or death,

he shall, upon so completing that period or upon so ceasing to work in that industry, as the case may be, be credited in the Employees and Contractors Register with 440 days continuous service in the building and construction industry.

(2) Where a person referred to in sub-section (1) is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry that, when added to the period of 440 days referred to in that sub-section, amounts to not less than 10 years, the person shall be credited in that Register with a further period of 440 days.

(3) Where a person referred to in sub-section (1)—

- (a) is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry that, when added to the period of 440 days referred to in that sub-section, amounts to not less than 495 days but less than 10 years; and
- (b) ceases to work in the building and construction industry by reason of total incapacity or death,

the person shall be credited in that Register with a further period, being a period that bears the same proportion to 440 days as the first-mentioned period referred to in paragraph (a) bears to 10 years.

(4) Where a person referred to in sub-section (1)—

- (a) is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry that, when added to the period of 440 days referred to in that sub-section, amounts to not less than 7 years but less than 10 years; and

- (b) ceases to work in the building and construction industry, other than by reason of total incapacity or death, with the intention of leaving that industry permanently,

the person shall be credited in that Register with a further period, being a period that bears the same proportion to 440 days as the first-mentioned period referred to in paragraph (a) bears to 10 years.

Removal of names from Employees and Contractors Register

45. (1) Where a registered employee or a registered contractor has not been credited with any period of continuous service in the Employees and Contractors Register for a period of not less than 4 years, the Board shall remove the name of that employee or contractor from that Register.

(2) Where the name of a registered employee or a registered contractor is removed from the Employees and Contractors Register under subsection (1)—

- (a) the employee or contractor ceases to be registered on the date on which his name is so removed; and
- (b) the employee or contractor, or his legal representative, is not entitled to apply for or be paid any amount for, or in lieu of, long service leave in respect of any period of service entered in the Register before the date on which the registration ceased.

(3) Nothing in the section prevents a person whose name has been removed from the register from applying to the Board for registration under this Ordinance.

PART VII—ANNUAL CERTIFICATES

Annual certificates for employees and contractors

46. The Registrar shall, as soon as practicable after 31 July, but not later than 1 November, in each year, send by post to each registered employee or registered contractor at his address, as last recorded in the Employees and Contractors Register, a certificate specifying—

- (a) the total number of days continuous service in the building and construction industry with which that employee or contractor has been credited in that Register in respect of the period commencing on the date of registration of the employee or contractor and ending on 30 June immediately preceding the date of the certificate;
- (b) the number of days continuous service in the building and construction industry with which that employee or contractor has been so credited in respect of the year ending on 30 June immediately preceding the date of the certificate; and
- (c) in the case of a registered contractor—the total of the amounts paid by that contractor to the Board in pursuance of section 38 during the year ending on 30 June immediately preceding the date of the certificate.

Annual certificates for employers

47. The Registrar shall, as soon as practicable after 31 July, but not later than 1 November, in each year, send by post to each employer at his address, as last recorded in the Employers Register, a certificate specifying—

- (a) the name, as recorded in the Employees and Contractors Register, of each of the employees employed by the employer during the year ending on 30 June immediately preceding the date of the certificate;
- (b) the total number of days continuous service in the building and construction industry with which each employee of that employer has been credited in the Employees and Contractors Register in respect of the period commencing on the date of registration of the employee and ending on 30 June immediately preceding the date of the certificate;
- (c) the number of days continuous service in the building and construction industry with which each employee of that employer has been so credited in respect of the year ending on 30 June immediately preceding the date of the certificate; and
- (d) the total of the amounts paid by that employer to the Board in pursuance of section 37 during the year ending on 30 June immediately preceding the date of the certificate.

Objection to matter specified in annual certificate

48. (1) A person to whom a certificate is sent in pursuance of section 46 or 47 may, within 6 months after the date of the certificate, lodge with the Board an objection in writing against the accuracy of any matter specified in the certificate.

(2) Where an objection is lodged with the Board under sub-section (1), the Board shall determine the objection and, where the Board allows the objection, shall make any necessary correction in the Register and issue an amended certificate to the person who lodged the objection.

PART VIII—LONG SERVICE LEAVE AND PAYMENTS**Long service leave**

49. A registered employee or a registered contractor is entitled to long service leave in accordance with the provisions of this Ordinance.

Year of continuous service

50. For the purposes of this Ordinance, a registered employee or a registered contractor shall be deemed to have completed a year of continuous service in the building and construction industry for each 220 days of continuous service in that industry credited to him in the Employees and Contractors Register.

Amount of leave

51. (1) A registered employee or a registered contractor who is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry of not less than 10 years is entitled to—

- (a) an amount of long service leave calculated at the rate of 13/15 of a week's leave for each completed year of continuous service with which he is credited under this Ordinance; and
- (b) for the remainder of that period of continuous service—an amount of long service leave equal to the period that bears the same proportion to 13/15 of a week as that remainder bears to one completed year of continuous service.

(2) A registered employee or a registered contractor who—

- (a) becomes entitled to long service leave by virtue of this Ordinance; and
- (b) is credited in the Employees and Contractors Register with a further period of continuous service commencing on the date on which he so became entitled to long service leave,

is, entitled to long service leave in respect of that further period calculated in accordance with sub-section (1).

Grant of leave

52. (1) Long service leave to which a registered employee is entitled under this Ordinance shall be granted by the employer—

- (a) within 6 months after the leave has accrued, or within such further period as the Board, on application made by the employer or the employee, determines; or
- (b) at such other time or times as are agreed by the employer and the employee.

Penalty: \$2,000.

(2) Long service leave shall not be granted in a period of less than 2 weeks.

(3) Where long service leave is granted in pursuance of this section, the employer shall give the registered employee a notice in writing specifying the date from which the long service leave is to be taken and the date on which the leave ends.

(4) Unless the registered employee otherwise agrees, a notice under sub-section (3) shall be given to the employee at least 2 months before the date specified in the notice as the date from which the long service leave is to be taken.

Penalty: \$2,000.

Entitlement to payment in lieu of leave

53. (1) Where a registered employee who is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry, other than the period of an apprenticeship, of not less than 5 years but less than 10 years ceases work in that industry, other than by reason of total incapacity or death or by reason of having reached the prescribed retiring age, with the intention of leaving that industry permanently, the employee is entitled to payment, in lieu of long service leave, in respect of—

- (a) an amount of long service leave calculated at the rate of 13/15 of a week's leave for each completed year of continuous service with which he is credited under this Ordinance; and
- (b) for the remainder of that period of continuous service—an amount of long service leave equal to the period that bears the same proportion to 13/15 of a week as that remainder bears to one completed year of continuous service.

(2) Where a registered contractor who is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry, other than the period of an apprenticeship, of not less than 5 years but less than 10 years ceases work in that industry, other than by reason of total incapacity or death or by reason of having reached the prescribed retiring age, with the intention of leaving that industry permanently, the contractor is entitled to payment, in lieu of long service leave, in respect of—

- (a) an amount of long service calculated at the rate of 13/15 of a week's leave for each completed year of continuous service with which he is credited under this Ordinance; and
- (b) for the remainder of that period of continuous service— an amount of long service leave equal to the period that bears the same proportion to 13/15 of a week as that remainder bears to one completed year of continuous service.

(3) Where a registered employee or a registered contractor is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry of not less than 55 days but less than 10 years and the employee or contractor ceases work in the building and construction industry, by reason of total incapacity or death, the employee or contractor is entitled to payment, in lieu of long service leave, in respect of—

- (a) an amount of long service leave calculated at the rate of 13/15 of a week's leave for each completed year of continuous service with which he is credited under this Ordinance; and

- (b) for the remainder of that period of continuous service—an amount of long service leave equal to the period that bears the same proportion to 13/15 of a week as that remainder bears to one completed year of continuous service.

Payment in lieu of leave on retirement

54. Where—

- (a) a registered employee or a registered contractor is credited in the Employees and Contractors Register with a period of continuous service in the building and construction industry of not less than 55 days but less than 10 years; and
- (b) the registered employee or registered contractor reaches the prescribed retiring age and by reason of reaching that age ceases to work in the building and construction industry, with the intention of leaving that industry permanently,

the registered employee or registered contractor is entitled to payment, in lieu of long service leave, in respect of—

- (c) an amount of long service leave calculated at the rate of 13/15 of a week's leave for each completed year of continuous service with which he is credited under this Ordinance; and
- (d) for the remainder of that period of continuous service—an amount of long service leave equal to the period that bears the same proportion to 13/15 of a week as that remainder bears to one completed year of continuous service.

Payment for leave

55. (1) A registered employee who has been granted long service leave under section 52, or a registered contractor who is entitled to long service leave, may apply to the Board for payment in respect of that leave.

(2) An application under sub-section (1) shall—

- (a) be in writing signed by the applicant;
- (b) be lodged with the Board;
- (c) specify the period of long service leave in respect of which the payment is sought; and
- (d) in the case of an application by a registered employee—be accompanied by the notice referred to in sub-section 52 (3).

(3) Where an application is made under sub-section (1) and the Board is satisfied that the applicant is entitled to long service leave under this Ordinance, the Board shall pay to the applicant out of the moneys of the Board an amount calculated in accordance with section 57.

(4) Where the Board pays an amount under this section to a registered employee or a registered contractor in respect of long service leave, the Board shall cause to be entered in the Employees and Contractors Register in relation to that employee or contractor particulars of—

- (a) the amount so paid to the employee or contractor; and
- (b) the period of long service leave granted to, or taken by, the employee or contractor.

Payment in lieu of leave

56. (1) Where a registered employee or a registered contractor is entitled to payment in lieu of long service leave under this Ordinance, the employee or contractor or, in the case of a deceased employee or contractor, his legal representative, may apply to the Board for payment accordingly.

(2) An application under sub-section (1) shall—

- (a) be in writing signed by the applicant;
- (b) be lodged with the Board; and
- (c) in the case of an application by a registered employee or a registered contractor who ceases work in the building and construction industry by reason of total incapacity—be accompanied by the certificate of a registered medical practitioner certifying that the employee or contractor is totally incapacitated for service in the building and construction industry.

(3) The Board may require an applicant referred to in paragraph (2) (c) to submit himself to a medical examination by a registered medical practitioner selected by the Board for that purpose from a panel of 5 registered medical practitioners nominated by the A.C.T. Branch of the Australian Medical Association.

(4) All fees or charges payable in respect of a medical examination under sub-section (3) shall be paid by the Board.

(5) Where an applicant refuses or fails, without reasonable excuse, to comply with a requirement of the Board under sub-section (3), the Board may refuse the application.

(6) Where an application is made under sub-section (1) and the Board is satisfied that the registered employee or registered contractor to whom the application relates is entitled to payment in lieu of leave under this Ordinance, the Board shall pay to the applicant out of the moneys of the Board an amount calculated in accordance with section 57.

(7) Where the Board pays an amount under this section to an applicant by way of payment in lieu of long service leave, the Board shall enter in the Employees and Contractors Register in relation to the applicant, or the employee or contractor to whom the application relates, particulars of the amount so paid.

Amount of payment for, or in lieu of, long service leave

57. Where—

- (a) a person applies for payment in respect of long service leave under section 55; or
- (b) a person applies for payment in lieu of long service leave under section 56,

the amount of the payment to be made to the applicant shall be calculated in

accordance with the formula—
$$\frac{13 \times D}{15} - \frac{D}{220} \times R$$
, where—

(c) D is—

- (i) in the case of a person referred to in paragraph (a)—the number of days of continuous service with which the person is credited under this Ordinance that entitle the person to the period of long service leave specified in his application under section 55; and
 - (ii) in the case of a person referred to in paragraph (b)—the number of days of continuous service with which the person, or the person in respect of whom the application under section 56 is made, is credited under this Ordinance; and
- (d) R is the weekly average of the ordinary remuneration that was entered in the Employees and Contractors Register in relation to the person, or the person in respect of whom the application is made, in respect of the last 4 months on which the person performed building and construction work immediately preceding the date on which he ceased work in the building and construction industry.

Public holidays to count as leave

58. Where a public holiday or an award holiday falls during a period of long service leave taken by a registered employee or contractor—

- (a) the public holiday or award holiday shall be deemed to be part of the long service leave; and
- (b) the period of leave shall not be increased because of the holiday.

PART IX—MISCELLANEOUS

Appeals

59. (1) Application may be made to the Tribunal for a review of a decision of the Board—

- (a) confirming a decision by the Registrar of refusal of registration of a person;
- (b) refusing to grant an exemption to an employer under sub-section 37 (4);

- (c) refusing an application for further time under sub-section 37 (1) or 38 (1);
- (d) making a determination under section 41;
- (e) determining an objection under section 48;
- (f) making, or refusing to make, a determination under section 52;
- (g) refusing to make a payment to an applicant under section 55 or 56;
or
- (h) refusing to make a payment under section 63.

(2) In this section, "Tribunal" means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.

Inspection of Register

60. An employer or a registered employee or a registered contractor may inspect, and obtain a certified copy of, an entry in a Register, being an entry that relates to that employer, employee or contractor, as the case may be.

No contracting out

61. (1) Subject to sub-section (2), this Ordinance has effect notwithstanding any award or agreement to the contrary.

(2) Nothing in this Ordinance affects the operation of an award or agreement to the extent that the award or agreement confers upon a registered employee rights that are more advantageous to the employee than the rights conferred upon the employee by this Ordinance.

Minister may approve State and Territory laws

62. Where a law of a State or another Territory provides for long service benefits for employees or contractors engaged in the building and construction industry, being benefits that are the same as or similar to the benefits provided by this Ordinance, the Minister may, on the recommendation of the Board, by notice published in the *Gazette*, approve the law for the purposes of this Ordinance.

Benefits under Long Service Leave Ordinance

63. (1) Where a registered employee—

- (a) is an employee within the meaning of the Long Service Leave Ordinance; and
- (b) at any time after the date fixed by the Minister under sub-section 2 (2) becomes entitled to take long service benefits under the Long

Service Leave Ordinance, in respect of a period of continuous service in the building and construction industry,

he shall, at the time he becomes so entitled, elect whether to take those benefits under the Long Service Leave Ordinance or to take the benefits provided by this Ordinance in respect of that period of continuous service.

(2) Where a registered employee makes an election under sub-section (1), he shall notify the Board in writing of the nature of his election and the period of continuous service in relation to which the election is made.

(3) A registered employee who elects in pursuance of sub-section (1) to take long service benefits under the Long Service Leave Ordinance in respect of any period of service in the building and construction industry shall not be credited in the Employees and Contractors Register with the period of service referred to in section 43 or 44 and the Board shall remove from that Register any other period with which the employee is credited in respect of that period of service.

(4) Where an employer makes a payment in pursuance of section 8 of the Long Service Leave Ordinance for, or in lieu of, long service leave to, or in relation to, a registered employee who has elected to take long service benefits under that Ordinance in respect of a period of service in the building and construction industry, the employer may apply to the Board for payment to him of the prescribed amount.

(5) Where an application is made to the Board by an employer under sub-section (4) and the Board is satisfied that the amount paid by the employer was properly paid in pursuance of section 8 of the Long Service Leave Ordinance, the Board shall pay to the employer out of the moneys of the Board the prescribed amount.

(6) For the purposes of sub-sections (4) and (5), the prescribed amount is a proportion of the amount that would have been payable by the Board to the registered employee if the employee had been entitled to payment for long service leave under this Ordinance in respect of the period specified by him under sub-section (2), being a proportion calculated in accordance

P1

with the formula— —, where—

P2

P1 is the number of days in the period commencing on the date fixed by the Minister under sub-section 2 (2) and ending on the date on which the employee becomes entitled to long service benefits under the Long Service Leave Ordinance; and

P2 is the number of days in the period specified by the employee under sub-section (2).

Arrangements with States and other Territories

64. Where the Minister has approved under section 62 a law of a State or another Territory for the purposes of this Ordinance, the Minister may make a reciprocal arrangement with the Minister of State of that State or Territory responsible for the administration of that law, being a reciprocal arrangement relating to—

- (a) payments for, or in lieu of, long service leave;
- (b) the exchange of information concerning service credits and entitlements to long service benefits between the Board and any equivalent authority established under that law; and
- (c) such other matters relating to long service benefits as the Minister thinks necessary or convenient.

Payments by Board to State or Territory authorities

65. (1) Subject to this section, where—

- (a) a person is paid an amount for, or in lieu of, long service leave by an authority established under an approved law of a State or another Territory;
- (b) the amount is so paid, either wholly or partly, in respect of a period of continuous service in the building and construction industry served by the person within the Territory; and
- (c) the Minister has made under section 64 a reciprocal arrangement with the Minister of State of that State or other Territory responsible for the administration of that law,

the Board shall, on request by the authority referred to in paragraph (a), pay to that authority out of the moneys of the Board, an amount equal to the amount that bears the same proportion to the amount so paid by that authority as the period of continuous service referred to in paragraph (b) bears to the total period of continuous service in respect of which that authority so paid that amount.

(2) The payment of an amount by the Board under sub-section (1) shall be made subject to such terms and conditions, if any, as are specified in the reciprocal arrangement referred to in paragraph (1) (c).

Regulations

66. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 10 September 1981.