

**RULES OF THE CONSTRUCTION INDUSTRY LONG
SERVICE LEAVE FUND AS AT 4 JULY 2017**

Contents

- 1. Definitions 1**
- 2. Interpretation 16**
- 3. Overriding Rules 18**
- 4. Overriding Rule prior to the Act coming into force 18**
- 5. Overriding Rule once the Act comes into force..... 18**
- 6. Effective Date 19**
- 7. Contracting out prohibited 19**
- 8. Fund..... 20**
- 9. Actuarial investigations..... 20**
- 10. Registration 22**
- 11. Lodging Long Service Leave Returns 22**
 - 11.1 Obligation and timing 22
 - 11.2 Form and content of Long Service Leave Returns 22
 - 11.3 Changes to Return Period 23
- 12. Payment of Long Service Leave Charge 23**
 - 12.1 Liability to pay Long Service Leave Charge 23
 - 12.2 Payment of Long Service Leave Charge by an Employer..... 23
- 13. Amount of Long Service Leave Charge for Workers 24**
 - 13.1 Calculating amount payable 24
 - 13.2 Amount of Prescribed Percentage..... 25
- 14. Calculation of Long Service Leave Charge where Ordinary Pay appears insufficient. 25**
- 15. Trustee may estimate Long Service Leave Charge 25**
 - 15.1 When a Long Service Leave Charge can be estimated 25
 - 15.2 Procedure for estimating a Long Service Leave Charge..... 26
 - 15.3 Identification of Worker 26
- 16. Registration 28**
- 17. Election by a Working Sub-Contractor to pay Long Service Leave Charge 28**
- 18. Payment of Long Service Leave Charge 28**
 - 18.1 Liability to pay Long Service Leave Charge 28

18.2	Payment of Long Service Leave Charge by a Working Sub-Contractor	28
19.	Amount of Long Service Leave Charge for Working Sub-Contractors	29
19.1	Prescribed Rate	29
19.2	Calculating amount payable	29
20.	Refund of Long Service Leave Charge upon revocation of election.....	29
21.	Workers Carrying out Construction Work outside Victoria.....	30
22.	Working Sub-Contractors carrying out Construction Work outside Victoria.....	30
23.	Exemption from Long Service Leave Return and Long Service Leave Charge Obligations.....	30
24.	Entitlement of Worker	32
25.	Payment of Long Service Leave Benefit to Worker on Notification of Long Service Leave	33
26.	Entitlement of Working Sub-Contractor	33
27.	Payment of Long Service Leave Benefit to Working Sub-Contractor on Notification of Long Service Leave	34
28.	Calculation of interest payable to Working Sub-Contractor	35
28.1	Interest calculated on all monies	35
28.2	Period for calculation	35
28.3	Rate of interest	35
29.	Entitlement of person as both Worker and Working Sub-Contractor	35
30.	Payment to person as both Worker and Working Sub-Contractors	37
31.	Calculation of Continuous Service for Workers	38
31.1	Continuous Service.....	38
31.2	Meaning of Service	38
32.	Calculation of Continuous Service for work prior to 1965	41
33.	Calculating Continuous Service where non-Construction Industry work carried out..	41
34.	One year of Continuous Service	42
35.	Calculation of Continuous Service for Working Sub-Contractors.....	42
35.1	Continuous Service.....	42
35.2	Meaning of Service	42
36.	Calculation of Continuous Service where person is both a Worker and a Working Sub-Contractor	43
37.	Calculation of payment where Long Service Leave has been previously taken.....	43
37.1	Taking into account payments made under the Rules	43
37.2	Taking into account payments made other than under the Rules.....	44
37.3	Avoiding duplication of payments	44
38.	Payment In Lieu on leaving the Construction Industry or unemployment	44
38.1	Entitlement to payment	44
38.2	Calculation of payment	45
39.	Payment In Lieu on death.....	45
39.1	Entitlement to payment	45
39.2	Calculation of payment	46
40.	When Ordinary Pay is calculated	47
40.1	Calculating Ordinary Pay for a Long Service Leave Benefit	47

40.2	Calculating Ordinary Pay for a Payment In Lieu on leaving the Construction Industry or unemployment	47
40.3	Calculating Ordinary Pay for a Payment In Lieu on death	47
40.4	Averaging Ordinary Pay.....	48
40.5	Indexing Ordinary Pay	48
41.	Determination that Ordinary Pay should be lesser amount	48
41.1	Power to determine that Worker's Ordinary Pay should be lesser amount.....	48
41.2	Final determination	48
42.	Determination that Ordinary Pay should be a higher amount.....	49
42.1	Power to determine that Worker's Ordinary Pay should be a higher amount	49
43.	Increase in Worker's pay	50
44.	Payment of Long Service Leave Benefit or Payments In Lieu	51
45.	Payment not made for public holidays or annual leave.....	51
46.	Payments in respect of leave entitlements accrued prior to the Act and the Former Act51	
46.1	Worker's entitlement to payment	51
46.2	Payments in advance	51
46.3	No payment from the Fund for leave entitlements prior to 21 December 1973	52
47.	Payment in respect of leave entitlements under the Former Act	52
48.	Reimbursement for payments in respect of Long Service Leave.....	52
48.1	Employer's entitlement to reimbursement from the Fund.....	52
48.2	Exceptions to Employer's entitlement to reimbursement from the Fund	53
48.3	Calculation of reimbursement	54
49.	Overpayments	55
50.	Reciprocal Arrangements	55
51.	Employer required to keep certain records.....	57
52.	Register of Employers	58
53.	Register of Working Sub-Contractors	58
54.	Register of Workers	58
55.	Non-Voting Persons.....	58
56.	Preservation of certain entitlements, rights and obligations	59
57.	Ceasing to be a Non-Voting Person	59
58.	Register of Non-Voting Persons.....	59
59.	Preliminary determinations.....	61
59.1	Application to CEO for preliminary determination.....	61
59.2	Form of application	61
59.3	CEO to make preliminary determination.....	61
60.	Determinations of Trustee.....	62
60.1	Review of preliminary determination	62
60.2	Form of review application.....	62
60.3	Trustee to consider application	62
60.4	Submissions to Trustee	62
60.5	Meaning of 'reasonable opportunity'	62
60.6	Delegation to Directors' committee.....	63
61.	Arbitration in accordance with Act	63

Part 1 – Definitions

1. Definitions

In these Rules, unless a different meaning is given in a Rule:

A Class Director means a person appointed as an 'A class' director of the Trustee pursuant to the Articles of Association of the Trustee;

Act means the *Construction Industry Long Service Leave Act 1997 (Vic)*;

Appendix means an appendix to these Rules;

Apprentice means:

- (a) in respect of work performed on or prior to 1 December 2015, a person who:
 - (i) was, at the time the work was performed:
 - A. ordinarily resident in Victoria; or
 - B. not ordinarily resident in Victoria, but in respect of whom long service leave charges were paid to the Trustee in accordance with the Act for the performance of that work by that person; and
 - (ii) performs work under a training contract to which the following provisions apply:
 - A. subject to paragraph (ii)B. below, the terms of the training contract may only be cancelled, suspended or varied by mutual agreement between the apprentice and the employer;
 - B. the Victorian Registrations and Qualifications Authority may cancel or suspend the training contract where it is satisfied after due enquiry that the employer cannot provide sufficient employment for the apprentice (in addition to any power of the employer under the training contract to stand down an apprentice who cannot usefully be employed);
 - C. the Victorian Registrations and Qualifications Authority may determine any question or difference arising between an employer and an apprentice about the dismissal or threatened dismissal of an apprentice if the apprentice believes that the dismissal or threatened dismissal is harsh, unjust or unreasonable; and
 - D. on the transmission of the business or any part of the business of the employer, the training contract is to be treated as being assigned to the person to whom the business is being transmitted,
- to the extent that the above conditions are consistent with the *Education and Training Reform Act 2006 (Vic)* or any superseding legislation; and

- (b) in respect of work performed after 1 December 2015, a person who performs work under a training contract to which the following provisions apply:
- (i) subject to paragraph (b)(ii) below, the terms of the training contract may only be cancelled, suspended or varied by mutual agreement between the apprentice and the employer;
 - (ii) the Victorian Registrations and Qualifications Authority may cancel or suspend the training contract where it is satisfied after due enquiry that the employer cannot provide sufficient employment for the apprentice (in addition to any power of the employer under the training contract to stand down an apprentice who cannot usefully be employed);
 - (iii) the Victorian Registrations and Qualifications Authority may determine any question or difference arising between an employer and an apprentice about the dismissal or threatened dismissal of an apprentice if the apprentice believes that the dismissal or threatened dismissal is harsh, unjust or unreasonable; and
 - (iv) on the transmission of the business or any part of the business of the employer, the training contract is to be treated as being assigned to the person to whom the business is being transmitted,

to the extent that the above conditions are consistent with the Education and Training Reform Act 2006 (Vic) or any superseding legislation;

Associated Corporation means a Corporation which, in relation to another Corporation:

- (a) is a related body corporate within the meaning of section 50 of the *Corporations Act 2001 (Cth)*; or
- (b) is an associated entity within the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*; or
- (c) either:
 - (i) has substantially the same directors; or
 - (ii) is under substantially the same management,

notwithstanding that either of those Corporations may have ceased to exist, or that the Corporations were not both in existence at the same time;

B Class Director means a person appointed as a 'B class' director of the Trustee pursuant to the Articles of Association of the Trustee;

Board means the board of Directors of the Trustee;

Building Trades Work means:

- (a) work of a kind which is within:
 - (i) the scope; and
 - (ii) one or more of the classifications,
set out in Appendix A and which is performed in Victoria; or

- (b) work of a kind usually performed by a person acting as a foreperson, sub foreperson or leading hand in the supervision of any work referred to in paragraph (a) above and which is performed in Victoria; or
- (c) work performed outside Victoria which, if performed in the Construction Industry in Victoria, would be Building Trades Work within the meaning of paragraphs (a) or (b) above;

C Class Director means a person appointed as a 'C class' director of the Trustee pursuant to the Articles of Association of the Trustee;

CEO means the Chief Executive Officer of the Trustee;

Child has the meaning given to 'child of a person' in the *Fair Work Act 2009* (Cth);

Commencement Date means 1 April 1997, being the date of execution of the Trust Deed;

Concrete Testing Services means collecting and testing samples of pre-mixed concrete to conduct simple, routine repetitive testing (including, but not limited to, hardness and fatigue tests, melting point determinations, pH readings or tests of the pass/fail type) in relation to concrete used in work of a kind referred to in the definition of Construction Industry;

Construction Industry means any of the industries of:

- (a) carrying out the construction (including pile driving), erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any of the following:
 - (i) buildings;
 - (ii) roads, railways, airfields or other structures for the passage of persons, animals or vehicles;
 - (iii) breakwaters, docks, jetties, piers or wharves;
 - (iv) harbours or waterways, where the work is to improve or alter the harbours or waterways for navigation purposes;
 - (v) structures or works for the storage or supply of water or for the irrigation of land;
 - (vi) structures or works for the conveyance, treatment or disposal of sewage or effluent from any premises;
 - (vii) structures or works for the extraction, refining, processing or treatment of materials or for the production or extraction of products and by-products from materials;
 - (viii) bridges, viaducts, aqueducts or tunnels;
 - (ix) chimney stacks, cooling towers, drilling rigs, gasholders or silos;
 - (x) pipelines;
 - (xi) navigational lights, beacons or markers;
 - (xii) structures or works for the drainage of land;
 - (xiii) structures or works for the storage of liquids (other than water) or gases;

- (xiv) structures or works for the generation, supply or transmission of electric power;
 - (xv) structures or works for the transmission of wireless or telegraphic communications;
 - (xvi) structures, fixtures or works for the use of any of the buildings, structures or works referred to in paragraphs (a)(i) to (a)(xv) above;
- (b) carrying out work for the preparation of sites for any buildings, structures or works referred to in paragraphs (a)(i) to (a)(xvi) above;
- (c) carrying out work:
- (i) on the site on which work of a kind referred to in paragraphs (a) or (b) above is being carried out; and
 - (ii) which comprises the fabrication, erection or installation of plant, plant facilities or equipment for the buildings, structures or works referred to in paragraphs (a) or (b) above;
- (d) carrying out Concrete Testing Services;
- (e) carrying out Construction Yardmen Services;
- (f) carrying out Electrical Services;
- (g) carrying out Floor Covering Services;
- (h) carrying out Industrial Machinery or Equipment Services;
- (i) carrying out Landscape Gardening Services;
- (j) carrying out Metal Trades Fabrication;
- (k) carrying out Non-Destructive Testing Services;
- (l) carrying out Parquetry Floor Laying Services;
- (m) carrying out Shopfitting Services; and
- (n) carrying out Watering System Services,

but does not include the industries of:

- (o) carrying out the construction, erection, reconstruction, renovation, alteration, demolition or maintenance of or repairs to ships or parts of ships; or
- (p) maintenance of or repairs to lifts or escalators;

Construction Industry Workers, Employers and Working Sub-Contractors, for the purpose of Rule 5, means Workers, Employers and Working Sub-Contractors who have an obligation or an entitlement under the Act or these Rules;

Construction Work means:

- (a) work:
 - (i) performed in the Construction Industry; and

- (ii) which is Building Trades Work, Electrical Trades Work, Metal Trades Work or Other Trades Work; or
- (b) any other work performed after 25 November 2003 where that other work:
 - (i) is not work within the meaning of paragraph (a) above; and
 - (ii) is performed by a Worker in addition to work within the meaning of paragraph (a) above where both types of work are performed for a single Employer; and
 - (iii) constitutes no more than 1/3rd of the total service of the Worker for that single Employer during a Return Period,

but does not include work comprising maintenance or repairs of a routine or minor nature by a Worker for an Employer who is not engaged substantially in the Construction Industry;

Construction Yardmen Services means storing, repairing, maintaining and loading scaffolding and scaffolding parts (either at or away from a site) where:

- (a) such scaffolding and scaffolding parts are to be used at a site on which work of a kind referred to in paragraphs (a) to (n) of the definition of Construction Industry is carried out; and
- (b) the services are carried out by a Worker for an Employer who is engaged substantially in:
 - (i) the scaffolding industry; or
 - (ii) the industry of carrying out works of a kind referred to paragraphs (a) to (o) of the definition of Construction Industry;

Continuous Service has the meaning given to it in Rules 31.1 and 35.1;

Corporation has the meaning given to it in section 57A of the *Corporations Act* 2001 (Cth);

Corresponding Law has the meaning given to it in section 18(6) of the Act;

Director means a director of the Trustee, including but not limited to, an A Class Director, a B Class Director and a C Class Director;

Document has the meaning given to it in section 38 of the *Interpretation of Legislation Act* 1984 (Vic);

Domestic Work means:

- (a) any work performed on, at or in respect of a house, including, but not limited to, a multi-storey house, duplex, terrace house or strata-titled townhouse; and
- (b) any other works determined by the Board from time to time to be Domestic Work,

but does not include any work performed on, at or in respect of any one or more apartments, flats or units, which are part of one building containing multiple such residences;

Effective Date means the day that section 20 of the Act came into operation;

Electrical Services means:

- (a) the maintenance of electric power distribution lines and all associated work;

- (b) the installation of electric light and power;
- (c) all classes of installation, assembly, diagnosing, servicing, wiring, rectification of faults in, repair and maintenance of, electrical installations and appliances including, but not limited to, any of the following:
 - (i) electronic products (including, but not limited to, television receivers, video cassette recorders, audio equipment/systems, home computers) and ancillary devices or equipment;
 - (ii) radio and television transmitting devices (including, but not limited to, LF, HF, VHF and UHF) and CB radios;
 - (iii) telemetry systems and ancillary equipment;
 - (iv) multiple access television distribution systems;
 - (v) computers and their peripherals;
 - (vi) microwaves and associated equipment;
 - (vii) electrically operated refrigeration and air conditioning equipment;
 - (viii) telephone communications devices;
 - (ix) fibre optic transmission lines and associated equipment;
 - (x) public address systems;
 - (xi) domestic satellite television receivers;
 - (xii) maritime electronic equipment (including, but not limited to, depth sounders and radars);
 - (xiii) superconductivity systems and associated equipment;
 - (xiv) electromagnetic devices;
 - (xv) instrumentation; or
 - (xvi) electrical switchboards;
- (d) security alarm systems work and intruder alarm systems work, meaning all industries or trades connected with the installation, maintenance, monitoring, controlling, repairing or testing of any electrical, electronic or acoustic security alarm equipment or security alarm device, individually or in any combination, which includes but is not limited to any:
 - (i) closed circuit television, video or photographic systems;
 - (ii) electronic or electro-mechanic access control systems;
 - (iii) computer hardware systems or computer software including ancillary equipment; or
 - (iv) external or internal lighting device; and

- (e) fire alarm systems work, meaning all industries or trades concerned with the installation, repair, modification, maintenance, testing and servicing of fire alarms, fire detectors, fire-suppression signs, bells and associated equipment,

carried out by:

- (f) Workers; or
- (g) Working Sub-Contractors,

where the Worker's Employer or the Working Sub-Contractor contracts to provide:

- (h) the services listed in (a) to (e) above to a third person; or
- (i) Workers or Working Sub-Contractors to provide the services listed in (a) to (e) above to a third person,

but does not include services performed or work carried out in the manufacturing section of the business of an Employer who:

- (j) manufactures or sells plant or equipment; and
- (k) installs or maintains that plant and equipment in:
 - (i) high and low tension power stations; or
 - (ii) substations for the generation or transmission of electric power;

Electrical Trades Work means:

- (a) work of a kind which is within one or more of the classifications set out in Appendix B and which is performed in Victoria; or
- (b) work of a kind usually performed by a person acting as a foreperson, sub foreperson or leading hand in the supervision of any work referred to in paragraph (a) above and which is performed in Victoria; or
- (c) work performed outside Victoria which, if performed in the Construction Industry in Victoria, would be Electrical Trades Work within the meaning of paragraphs (a) or (b) above;

Employer means a person (not being the Crown in right of the Commonwealth of Australia or the State of Victoria or any public statutory body constituted under the law of the Commonwealth or of that State) who:

- (a) employs Workers under a contract of employment; or
- (b) being a principal contractor, engages other Employers or Working Sub-Contractors by contract, not being a contract of employment,

and includes:

- (c) a Working Sub-Contractor who employs a Worker; and
- (d) for the purpose of any Rule entitling the Trustee to recover any charge or any amount from a Corporation described in paragraph (a), (b) or (c) above, includes an Associated Corporation of that Corporation;

Equivalent Authority means any authority, Corporation or other body established in accordance with a Corresponding Law that administers the long service leave scheme provided for by the Corresponding Law;

Financial Year means a period commencing on 1 July and finishing on 30 June in the following calendar year;

Floor Covering Services means:

- (a) preparing, levelling or sealing floors in preparation for, or finishing, floor coverings; or
- (b) laying or installing floor coverings (including, but not limited to, installing vinyl or linoleum on floors and walls, installing vinyl tiles and vinyl planking, carpet laying, carpet tile laying, and sanding, polishing or lacquering floor coverings),

by a Worker for an Employer who has a contract to supply such services to a third person, but does not include:

- (c) sanding, polishing or lacquering floors or cleaning floor coverings by a Worker who does not also:
 - (i) prepare, level or seal those floors; or
 - (ii) lay or install those floor coverings,
 - (iii) for the same Employer; or
- (d) Domestic Work;

Former Act means the *Construction Industry Long Service Leave Act 1983 (Vic)*;

Former Fund means the Construction Industry Long Service Leave Fund established in accordance with section 9 of the Former Act as in force immediately before its repeal;

Fund means the Construction Industry Long Service Leave Fund which is to be established under the Trust Deed;

Hours of Work has the meaning given to it in paragraph (h)(ii) of the definition of 'Ordinary Pay' in Rule 1;

Immediate Family means:

- (a) a spouse, de facto partner, Child, parent, grandparent, grandchild or sibling of the Worker; or
- (b) a Child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Worker;

Income means, in respect of any Financial Year, the net income of the Fund for that Financial Year, determined according to generally accepted accounting principles and approved accounting standards and without regard to any loss, whether on income or capital account, incurred in any preceding Financial Year;

Industrial Machinery or Equipment Services means work which:

- (a) is Metal Trades Work; and
- (b) comprises one or more of the following activities:

- (i) installation of;
 - (ii) placement of;
 - (iii) removal of;
 - (iv) relocation of;
 - (v) fixing or fastening in position for use of;
 - (vi) commissioning of;
 - (vii) repair of (regardless of where the work is carried out);
 - (viii) upgrade of (regardless of where the work is carried out);
 - (ix) maintenance or modification to (regardless of where the work is carried out):
 - A. industrial machinery or equipment used to perform a function or process in the course of manufacturing or processing goods or materials; or
 - B. the following other machinery or equipment:
 - I commercially operated motor vehicles with a gross vehicle mass of 4.5 or more tonnes;
 - II commercially operated plant and equipment such as tractors, excavators or forklifts; or
 - III fixed plant and equipment used in materials handling, logistics and distribution,
- but does not include:
- C. such activities where they are carried out in relation to:
 - I trams, trains or other rolling stock (or any part of them) by Workers at their Employer's place of business;
 - II machinery or equipment, including vehicles, used for domestic purposes; or
 - III aircraft; or
 - D. Domestic Works; and

(c) is carried out by:

- (i) Workers; or
- (ii) Working Sub-Contractors,

where the Worker's Employer or the Working Sub-Contractor contracts to provide such services to a third person;

Landscape Gardening Services means levelling and earth building gardens, laying turf, planting any live plants, or the construction, creation, installation, maintenance or repair of garden landscapes, including but not limited to, water features, rockeries, land contouring,

pergolas, gazebos, deckings, pathways and walkways, paving, retaining walls, garden or landscape lighting systems, but does not include:

- (a) mowing turf or lawns;
- (b) weeding, watering or maintenance of turf, lawns or garden beds;
- (c) maintaining, watering or pruning any live plants; or
- (d) Domestic Work;

Leave Entitlement Period means:

- (a) in respect of a Worker, the period for which a Worker is entitled to be paid a Long Service Leave Benefit in accordance with Rule 24.4, being a period of either 1/60th or 1/40th of the Worker's Continuous Service (whichever applies); or
- (b) in respect of a Working Sub-Contractor, the period determined in accordance with Rules 27.1.1, 27.1.2, 30.1.1(a) and 30.1.1(b) being a period of either 1/60th or 1/40th of the Working Sub-Contractor's Continuous Service (whichever applies);

Long Service Leave means any period of long service leave to which a Worker is entitled in accordance with the Worker's Terms of Employment, in accordance with legislation or otherwise, in respect of any Continuous Service of that Worker;

Long Service Leave Benefit means an amount of money calculated in accordance with these Rules in respect of the Continuous Service of a Worker or Working Sub-Contractor, but does not include a Payment In Lieu;

Long Service Leave Charge means an amount of money payable into the Fund by any Employer or any Working Sub-Contractor in accordance with the Act, Rule 12, Rule 15 or Rule 18;

Long Service Leave Return means a notice in writing provided by an Employer to the Trustee in accordance with the requirements of Rule 11;

Metal Trades Fabrication means the fabrication of any metal structure, metal fixture, metal fitting, metal chattel or metal works:

- (a) where the above structure, fixture, fitting or chattel or works are specifically fabricated for a particular building, particular structure or particular works; and
- (b) the fabrication is performed in a temporarily established factory or workshop;

Metal Trades Work means:

- (a) work of a kind which is within:
 - (i) the scope; and
 - (ii) one or more of the classifications, set out in Appendix C and which is performed in Victoria; or
- (b) work of a kind usually performed by a person acting as a foreperson, sub-foreperson or leading hand in the supervision of any work referred to in paragraph (a) above and which is performed in Victoria; or

- (c) work performed outside Victoria which, if performed in the Construction Industry in Victoria, would be Metal Trades Work within the meaning of paragraphs (a) or (b) above,

but does not include:

- (d) the manufacture of any structure, fixture, fitting, chattel or works which is not manufactured specifically for a particular building or a particular structure or particular works of the kind referred to in paragraphs (a) to (c) of the definition of Construction Industry;
- (e) the manufacture of any structure, fixture, fitting, chattel or works in a permanently established factory or workshop; or
- (f) any mass manufacture of any structure, fixture, fitting, chattel or works;

Minister means:

- (a) at any time prior to the Effective Date, the Minister of the Victorian Government who is allocated responsibility for the Former Act; and
- (b) from and including the Effective Date, the Minister of the Victorian Government who is allocated responsibility for the Act;

Non-Destructive Testing Services means work:

- (a) comprising the investigation of the material integrity of a metal works, structure or object that does not impair the future usefulness of, or is not deleterious to, the physical state of that metal works, structure or object including, but not limited to, testing by visual examination, radiography, ultrasound, magnetic particle crack detection, endoscopy or other method of non-destructive testing as determined from time to time by the National Association of Testing Authorities, Australia; and
- (b) which is performed by a Worker for an Employer at a site not ordinarily occupied by the Employer where the Employer has a contract to supply the services described in paragraph (a) above to a third person,

but does not include mechanical testing, except where the mechanical testing is performed by a Worker in the course of testing the integrity of a metal works, structure or object;

Non-Voting Person means at any time an Employer, Worker or Working Sub-Contractor who at that time holds a certificate under Rule 55 declaring that person to be a 'Non-Voting Person', which certificate had not expired or been revoked by the Trustee;

Normal Weekly Number of Hours Work means:

- (a) the Weekly Number of Hours of a Worker fixed by the Worker's Terms of Employment; or
- (b) where no Weekly Number of Hours of work is fixed by the Worker's Terms of Employment (excluding piece workers), the first 38 hours worked by the Worker for the relevant Employer in any week, commencing on Monday and ending on Sunday;

Ordinary Pay means, subject to Rules 14, 40, 41 and 42, the total amount of remuneration received by a Worker from the relevant Employer including, but not limited to:

- (a) payments for annual leave taken by the Worker;

- (b) payments for an absence because of:
 - (i) the Worker taking leave:
 - A. because the Worker is not fit for work because of a personal illness, or personal injury, affecting the Worker (other than any absence because of an injury arising out of or in the course of the Worker's employment for which the employee is receiving compensation payable under the Accident Compensation Act 1985 (Vic) or the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)); or
 - B. to provide care or support to a member of the Worker's Immediate Family, or a member of the Worker's household, who requires care and support because of:
 - I a personal illness or personal injury affecting the member; or
 - II an unexpected emergency affecting the member;
 - (ii) the Worker undertaking jury service, including, but not limited to, attendance for jury selection;
 - (iii) the Worker appearing to give evidence before any court, body or person; or
 - (iv) the Worker taking compassionate leave; and
- (c) in the event of the dismissal of the Worker, payments for accrued but untaken annual leave,

but does not include:

- (d) the value of meals or accommodation paid for or provided by the Employer;
- (e) an allowance paid to a Worker for meals or accommodation where the Worker is required to live away from the place where they are ordinarily resident for the purpose of their employment;
- (f) travelling allowances;
- (g) annual leave loading;
- (h) in respect of a Worker whose Terms Of Employment fix:
 - (i) the weekly number of hours of work (**Weekly Number of Hours**); and
 - (ii) the times and days on which those hours must be worked (**Hours of Work**);

any remuneration paid for work performed by the Worker for the relevant Employer outside the Hours of Work or in excess of the Weekly Number of Hours; or

- (i) in respect of a Worker whose Terms of Employment:
 - (i) fix the Weekly Number of Hours; and
 - (ii) do not fix the Hours of Work;

any remuneration paid by the relevant Employer for any hours in excess of the first number of hours worked for that Employer in any week (commencing on Monday and ending on Sunday) equal to the Weekly Number of Hours;.

Ordinary Resolution means, in relation to the Board, a resolution approved (in writing on a show of hands or by a poll) by a majority of Directors;

Other Trades Work means work:

- (a) performed by a person in Victoria for his or her Employer in respect of services provided by the Employer to a third person; and
- (b) which is carried out on an onshore oil or gas processing facility or an offshore platform or installation (including, but not limited to, a platform or installation located in the Bass Strait); and
- (c) which comprises:
 - (i) the supervision of any work that has the potential to create a spark or a flame that may ignite combustible gases, or which is otherwise of a hazardous nature, with a view to monitoring the environment in which the work is being carried out and ensuring that that environment is safe; or
 - (ii) all or most of the following tasks:
 - A. handling helicopters;
 - B. first aid;
 - C. warehouse duties (such as stores stocktaking);
 - D. dogging;
 - E. industrial housekeeping and cleaning;
 - F. assisting tradespeople;
 - G. rigging and scaffolding;
 - H. conducting compliance checks;
 - I. administration in relation to meetings and emergency drills; and
 - J. minor maintenance work;

Parquetry Floor Laying Services means levelling, sealing and laying floors in connection with the installation, renovation or removal of parquetry flooring, but does not include sanding or polishing parquetry floors by Workers who do not also level, seal and lay those parquetry floors for the same Employer;

Payment In Lieu means an amount of money payable by the Trustee in lieu of a Long Service Leave Benefit in accordance with Rules 38 or 39;

Prescribed means, subject to the Act (including section 7 of the Act), prescribed by a Special Resolution of the Board;

Prescribed Percentage means the percentage determined by the Board from time to time in accordance with Rule 13.2;

Prescribed Rate means the amount payable per month to the Trustee by a Working Sub-Contractor who elects to pay Long Service Leave Charges in respect of work carried out by the Working Sub-Contractor;

Reciprocal Arrangement means an arrangement made in accordance with Rule 50;

Records mean the records of the Continuous Service in the Construction Industry of Workers and Working Sub-Contractors kept by the Trustee in accordance with the Act and Part 11 of these Rules;

Register of Employers means a register of Employers in the Construction Industry kept by the Trustee in accordance with the Act and Rule 52;

Register of Non-Voting Persons means the register or sub-registers of Non-Voting Persons kept by the Trustee in accordance with Rule 58;

Register of Workers means the register of Workers in the Construction Industry kept by the Trustee in accordance with the Act and Rule 54;

Register of Working Sub-Contractors means the register of Working Sub-Contractors performing Construction Work in the Construction Industry kept by the Trustee in accordance with the Act and Rule 53;

Registration Number means, in relation to a Worker, the registration number ascribed to the Worker by the Trustee;

Return Period means a period commencing on a 'start date' specified below and ending on the corresponding 'end date' set out below in the same Financial Year:

Start Date	End Date
1 July	30 September
1 October	31 December
1 January	31 March
1 April	30 June

Rules means these Construction Industry Long Service Leave Rules and any Schedule and Appendix to them;

Schedule means the schedule to these Rules;

Service has the meaning given to it in Rules 31.2 and 35.2;

Shopfitting Services means:

- (a) manufacturing, installing, altering or repairing:
 - (i) shopfronts;
 - (ii) showcases;
 - (iii) partitions, including but not limited to:
 - A. partitions involving wrap-around glazing; and

B. partitions involving the insertion of glass panels where the glass is 6.35 millimetres or less in thickness, by beads or moulds or other dry glazing methods; and

(iv) exhibitor's stands,

irrespective of where the work is performed; and

(b) installing or altering interior fixtures and fittings in or on buildings,

but does not include small carpentry repair and renovation work carried out by a carpenter or joiner employed by an Employer who is not engaged substantially in the industry of providing the services described in one or more of paragraphs (a) or (b) above;

Special Resolution means in relation to the Directors, a resolution approved (in writing on a show of hands or by a poll) by not less than:

(a) 7 out of 8 of the A Class Directors and B Class Directors; and

(b) 2 out of 3 of the C Class Directors;

Terms of Employment means the terms and conditions of the Worker's employment, including, where relevant, the terms of any contract and the provisions of applicable industrial instruments;

Trust Deed means the trust deed between Barry Charles Amond (as 'Settlor') and CoINVEST Limited (as 'Trustee') establishing the Fund and to which these Rules are scheduled as Schedule 2;

Trustee means CoINVEST Limited ACN 078 004 985;

Watering System Services means the installation, repair, commissioning and maintenance of reticulated watering systems for the sustenance of any plants and the installation of equipment ancillary to the operation of any reticulated watering system, but does not include:

(a) work carried out for the purpose of viticulture, horticulture (including, but not limited to, for any nursery, the production of any commercial crop or commercial plant production), or agriculture; or

(b) Domestic Work;

Weekly Number of Hours has the meaning given to it in paragraph (h)(i) of the definition of 'Ordinary Pay' in Rule 1;

Worker means a person who:

(a) in respect of work performed on or prior to 1 December 2015, a person who:

(i) was, at the time the work was performed:

A. ordinarily resident in Victoria; or

B. not ordinarily resident in Victoria but in respect of whom long service leave charge were paid to the Trustee in accordance with the Act for the performance of that work by that person; and

(ii) performs work under a contract of employment, and includes a foreman, sub-foreman and an Apprentice;

- (b) in respect of work performed after 1 December 2015, a person who performs work under a contract of employment, and includes a foreman, sub foreman and an Apprentice;

Working Sub-Contractor means:

- (a) in respect of work performed on or prior to 1 December 2015, a person who:
- (i) was, at the time the work was performed:
 - A. ordinarily resident in Victoria; or
 - B. not ordinarily resident in Victoria but in respect of whom long service leave charges were paid to the Trustee in accordance with the Act for the performance of that work by that person; and
 - (ii) either:
 - A. performs work for fee or reward under a contract, a substantial component of which is for labour, regardless of whether they are an Employer or in partnership with another person; or
 - B. performs Electrical Trades Work or Metal Trades Work for fee or reward but who is not an Employer; and
- (b) in respect of work after 1 December 2015, a person who either:
- (i) performs work for fee or reward under a contract, a substantial component of which is for labour, regardless of whether they are an Employer or in partnership with another person; or
 - (ii) performs Electrical Trades Work or Metal Trades Work for fee or reward but who is not an Employer;

but does not include a person who performs work under a contract of employment.

2. Interpretation

2.1 In these Rules, unless the context otherwise requires:

- 2.1.1 the singular includes the plural and vice versa and words importing a gender include other genders;
- 2.1.2 other grammatical forms of defined words or phrases have corresponding meanings;
- 2.1.3 a reference to any legislation or statutory instrument is a reference to that legislation or statutory instrument as amended or varied from time to time;
- 2.1.4 a reference to any body or authority is a reference to that body or authority as superseded from time to time;
- 2.1.5 a reference to a person includes a Corporation, firm or body of persons except:
 - (a) in the definitions of 'Worker' and 'Working Sub-Contractor', where a reference to a person is limited to a natural person; and

- (b) in the Appendices, where a reference to a person is limited to a 'Worker' or a 'Working Sub-Contractor';
- 2.1.6 a reference to a Document or agreement, including these Rules and the Trust Deed, includes a reference to that Document or agreement as novated, altered or replaced from time to time;
- 2.1.7 a reference to writing includes any mode of representing or reproducing words, figures or symbols in a permanent and visible form including, but not limited to, in electronic form;
- 2.1.8 headings are used for reference only and do not affect the construction of these Rules, except in the Appendices;
- 2.1.9 the Appendices are to be interpreted in accordance with the principles applied when interpreting industrial instruments such as awards and agreements;
- 2.1.10 in the Appendices, terms that are not defined elsewhere in these Rules are to be interpreted having regard to the meaning given to them in relevant industrial awards, industrial agreements, and relevant orders and decisions of courts and tribunals with respect to industrial matters;
- 2.1.11 where a discretion or any right to determine, approve or consent to any matter or thing is given, such a discretion or right is a sole and absolute discretion or right of the person to whom it is given and need not be exercised in the favour of a Worker or Working Sub-Contractor or any other person; and
- 2.1.12 the use of initial capital letters for defined words and expressions in these Rules is to be disregarded for the purposes of section 3(2) of the Act, so that the words and expressions in the Act are to have the same respective meanings as they have in these Rules, regardless of whether those words or expressions have initial capital letters in these Rules.

Part 2 – Overriding Rules

3. Overriding Rules

- 3.1 Rules 4 and 5 apply notwithstanding anything to the contrary in any other part of these Rules.
- 3.2 Rule 4 cannot be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part, except in accordance with that Rule 4.
- 3.3 Rule 5 cannot be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part, except in accordance with that Rule 5.

4. Overriding Rule prior to the Act coming into force

Prior to the Effective Date, these Rules cannot be added to, revoked, amended, modified, varied, substituted, or replaced in whole or in part, except:

- 4.1 by the Minister by notice in writing to the Trustee; or
- 4.2 by the Trustee by a deed poll authorised by a Special Resolution of the Board and made with the prior written approval of the Minister.

5. Overriding Rule once the Act comes into force

- 5.1 As from the Effective Date, the provisions of these Rules may, subject to the Act (including without limitation section 7 of the Act), be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part either directly or indirectly by a deed poll authorised by a Special Resolution of the Board provided that any deed poll purporting to add to, revoke, amend, modify, vary, substitute or replace:

- 5.1.1 this Rule 5;
- 5.1.2 the meanings given to 'Prescribed' and 'Special Resolution' as respectively defined in Rule 1; or
- 5.1.3 the meaning given to any or all terms defined in Rule 1 (including by reference to any other Rules) to the extent that they are used in any or all of the provisions of these Rules specified in paragraph 5.1.1 or 5.1.2 above,

will be void and of no effect unless prior to its execution it was approved pursuant to a referendum of Construction Industry Workers, Employers and Working Sub-Contractors other than Non-Voting Persons.

- 5.2 Each referendum under this Rule 5 must be conducted by the Trustee under the supervision of and in accordance with guidelines approved by either the Victorian State Electoral Office or the Australian Electoral Commission.
- 5.3 A Special Resolution will be approved pursuant to a referendum for the purposes of this Rule 5 only if more than:
 - 5.3.1 50% of all Workers;

5.3.2 50% of all Employers; and

5.3.3 50% of all Working Sub-Contractors,

other than Non-Voting Persons who:

5.3.4 were registered with the Trustee in accordance with the Rules as at the date nominated by the Trustee for the purposes of determining entitlements to vote at that referendum (being a date not more than 6 months or less than one month before the date for the referendum); and

5.3.5 voted at that referendum,

voted in favour of the Special Resolution.

5.4 For the avoidance of doubt, nothing in this Rule 5 requires a Special Resolution to be approved in accordance with the referendum procedure prescribed in this Rule 5 if the Special Resolution relates to the exercise by the Trustee of any power, authority or discretion given to the Trustee under the Trust Deed, the exercise of which:

5.4.1 would have the effect of enlarging the class of persons capable of being paid benefits out of the Fund; and

5.4.2 has been approved by the Governor-in-Council pursuant to section 7 of the Act.

6. Effective Date

6.1 Rules 1, 2, 3, 4, 5 and this Rule 6 operate from the Commencement Date.

6.2 Subject to Rule 6.1, these Rules become operative as from the Effective Date. Until the Effective Date, the Trustee holds the Fund and Income on trust for the Former Fund.

7. Contracting out prohibited

These Rules apply despite any provision to the contrary in any contract or agreement, whenever made.

Part 3 – The Fund

8. Fund

8.1 The Trustee must pay the following amounts into the Fund:

- 8.1.1 the Long Service Leave Charges paid to the Trustee in accordance with these Rules and the Act;
- 8.1.2 any amounts received from an Equivalent Authority in accordance with a Reciprocal Arrangement;
- 8.1.3 any proceeds of any investment of the Fund; and
- 8.1.4 any other amounts paid to the Trustee in accordance with these Rules and the Act, including, but not limited to, any damages, fines, legal costs or interest payable as a result of legal proceedings.

8.2 The Trustee may pay the following amounts out of the Fund:

- 8.2.1 the Long Service Leave Benefits or Payments In Lieu payable by the Trustee in accordance with these Rules and the Act;
- 8.2.2 the remuneration and expenses reasonably incurred by the Trustee in the administration of the Fund;
- 8.2.3 any amounts ordered by a court or tribunal to be paid by the Trustee, including, but not limited to, damages, fines, legal costs or interest; and
- 8.2.4 any amounts which the Trustee in its discretion reasonably believes should, in the circumstances, be paid from the Fund, including, but not limited to:
 - (a) refunds of Long Service Leave Charges paid by Employers or Working Sub-Contractors;
 - (b) amounts payable by the Trustee to an Equivalent Authority in accordance with a Reciprocal Arrangement; and
 - (c) where the Trustee, in its discretion, has determined that, although an entitlement to a Long Service Leave Benefit or a Payment In Lieu in accordance with the Act and the Rules does not exist, money from the Fund should be paid to a Worker or Working Sub-Contractor or to another person on the merits of the case, or in order to preserve the Fund.

9. Actuarial investigations

9.1 The Trustee must investigate the sufficiency of the Fund at least every 3 years from the Commencement Date.

9.2 The Trustee must appoint one or more actuaries to carry out any investigation in accordance with Rule 9 and to report to the Trustee.

9.3 The report commissioned by the Trustee:

- 9.3.1 must state whether, in the opinion of the actuary, any reduction or increase is necessary in the rates of contribution to the Fund; and
- 9.3.2 may include a statement of any changes which, in the opinion of the actuary, could be made to improve the efficiency of the administration of the Fund.

Part 4 – Employers’ obligations to register, lodge Long Service Leave Returns and pay Long Service Leave Charges

10. Registration

Where a Worker carries out Construction Work for more than 5 days in a calendar month, the Worker’s Employer must register with the Trustee within 28 days after the end of that calendar month.

11. Lodging Long Service Leave Returns

11.1 Obligation and timing

11.1.1 Where an Employer:

- (a) has employed a Worker who performed Construction Work during a Return Period, the Employer must provide a Long Service Leave Return to the Trustee in accordance with Rule 11.2; or
- (b) has registered with the Trustee in accordance with Rule 10 but has not employed Workers who performed Construction Work during a Return Period, the Employer must provide a Long Service Leave Return to the Trustee stating so,

within 14 days after the end of the Return Period.

11.1.2 The Trustee may, in its discretion, accept the provision of a Long Service Leave Return by an Employer under Rule 11.1.1, notwithstanding the that the time specified in Rule 11.1.1 for provision of the Long Service Leave Return has expired.

11.1.3 Nothing in Rule 11.1.2 precludes the Trustee from bringing proceedings against an Employer under section 9 of the Act for failure to provide a Long Service Leave Return in accordance with Rule 11.1.1.

11.2 Form and content of Long Service Leave Returns

The Long Service Leave Return must contain the following information:

11.2.1 for each Worker employed by the Employer who performed Construction Work during the Return Period:

- (a) the Worker’s name and Registration Number (if any);
- (b) if requested by the Trustee, whether the Worker’s Weekly Number of Hours and Hours of Work are fixed by the Worker’s Terms Of Employment;
- (c) the number of days of Service with the Employer during the Return Period;
- (d) the period of, and reasons for, any absence or interruption of the kind mentioned in Rules 31.1.2, 31.2.3 and 31.2.4 during the Return Period;

- (e) the amount of Ordinary Pay paid by the Employer to the Worker during the Return Period (other than where the Worker is an Apprentice); and
 - (f) if requested by the Trustee, the Employer's estimate of the total amount of Long Service Leave Charges payable by the Employer in respect of the Worker for the Return Period, calculated in accordance with these Rules;
- 11.2.2 for each Worker who commenced employment with the Employer during the Return Period:
 - (a) the name of the Worker; and
 - (b) the date of commencement of employment;
- 11.2.3 for each Apprentice who completed their apprenticeship during the Return Period:
 - (a) the name of the Apprentice; and
 - (b) the date of completion of the apprenticeship; and
- 11.2.4 for each Worker who ceased employment with the Employer during the Return Period:
 - (a) the Worker's name and Registration Number (if any);
 - (b) the date of cessation of employment;
 - (c) the number of days of any of unused annual leave; and
 - (d) any amount paid to the Worker in respect of annual leave not taken.

11.3 Changes to Return Period

The Trustee may, at any time and in its sole discretion by Ordinary Resolution, change the dates referred to in the definition of Return Period in Rule 1.

12. Payment of Long Service Leave Charge

12.1 Liability to pay Long Service Leave Charge

An Employer must pay to the Trustee a Long Service Leave Charge calculated in accordance with Rules 13, 14 or 15 (whichever applies) within the time specified in Rule 12.2.2 or 12.2.3 (whichever applies) in respect of any Worker (other than an Apprentice) employed by the Employer who performed Construction Work during a Return Period.

12.2 Payment of Long Service Leave Charge by an Employer

12.2.1 Where a Long Service Leave Return has been lodged by an Employer in accordance with Rule 11 for a Return Period, the Trustee must, in respect of the Return Period:

- (a) calculate, in accordance with Rule 13, 14 or 15 (whichever applies), the amount of the Long Service Leave Charge payable by the Employer in respect of every Worker (other than an Apprentice) employed by the Employer and who has performed Construction Work during the Return Period to which the Long Service Leave Return relates; and

- (b) notify the Employer:
 - (i) in writing of the amount of the Long Service Leave Charge where the Long Service Leave Charge has been calculated in accordance with Rule 13 or 14; or
 - (ii) in accordance with the procedure set out in Rule 15.2, where the Long Service Leave Charge has been estimated in accordance with Rule 15.
- 12.2.2 An Employer must pay to the Trustee the amount of the Long Service Leave Charge specified by the Trustee in accordance with Rule 12.2.1(b) within 14 days of:
 - (a) for a Long Service Leave Charge calculated in accordance with Rule 13 or 14, the date of the notice issued in accordance with Rule 12.2.1(b)(i); or
 - (b) for a Long Service Leave Charge estimated in accordance with Rule 15, the date on which the Trustee's estimate is deemed to be the Long Service Leave Charge payable by the Employer in accordance with Rule 15.2.4 or 15.2.6.
- 12.2.3 Where a Long Service Leave Return has not been lodged in accordance with Rule 11 for a Return Period, then the Long Service Leave Charge payable by the Employer to the Trustee:
 - (a) becomes payable within 14 days after the end of the Return Period to which the Long Service Leave Charge relates; and
 - (b) is calculable by the Trustee in accordance with Rule 13, 14 or 15 (whichever applies).
- 12.2.4 In respect of any Construction Work carried out by a Worker during the period commencing on 6 May 2014 and ending on 17 April 2015, Rule 12 of these Rules, as it existed during that period, will continue to apply and remain in force.
- 12.2.5 Rules 12.2.1 to 12.2.4 above apply to a Long Service Leave Charge payable by an Employer in accordance with Rule 21.

13. Amount of Long Service Leave Charge for Workers

13.1 Calculating amount payable

- 13.1.1 Subject to Rules 13.1.2 and 15.2, the amount of the Long Service Leave Charge payable by an Employer in respect of a Worker for a Return Period is the Prescribed Percentage of the Ordinary Pay of the Worker for work carried out by the Worker during the Worker's Normal Weekly Number of Hours Work in that Return Period.
- 13.1.2 Subject to Rule 13.1.3, where, in any calendar month during a Return Period, a Worker performed Construction Work for 5 days or less for an Employer, that Employer is not required to pay a Long Service Leave Charge in respect of that Construction Work.
- 13.1.3 Rule 13.1.2 does not apply where the Worker has worked 5 days or less in a calendar month because:

- (a) the Worker's employment with the Employer commenced during the course of that calendar month and the Worker performed Construction Work for the Employer for more than 5 days during the following calendar month; or
- (b) the Worker's employment with the Employer ceased during the course of that calendar month and the Worker had performed Construction Work for the Employer for more than 5 days during the preceding calendar month.

13.2 Amount of Prescribed Percentage

- 13.2.1 Subject to the Act, the Board may determine the Prescribed Percentage from time to time by Special Resolution.
- 13.2.2 The Trustee must give all Employers notice in writing of any change in the Prescribed Percentage not less than 2 months prior to the change taking effect.

14. Calculation of Long Service Leave Charge where Ordinary Pay appears insufficient

- 14.1 The Trustee may decide that a Worker's Ordinary Pay for the purpose of calculating the Long Service Leave Charge payable by an Employer in respect of the Worker should be deemed to be a higher amount if the Worker's Ordinary Pay for the relevant Return Period, calculated in accordance with Rule 13.1, is less than the amount that the Worker would have been paid under:
 - 14.1.1 the minimum rate of pay in a relevant award or industrial instrument for the kind of work performed by the Worker; or
 - 14.1.2 the national minimum wage set by Fair Work Australia, for the relevant Return Period.
- 14.2 Where the Trustee makes a decision in accordance with Rule 14.1, it may deem the Worker's Ordinary Pay to be a higher amount, having regard to any factor the Trustee thinks fit, including, but not limited to:
 - 14.2.1 the minimum rate of pay in a relevant award or industrial instrument for the kind of work performed by the Worker; or
 - 14.2.2 the national minimum wage set by Fair Work Australia.
- 14.3 The Trustee must notify the Employer of any decision made by it in accordance with Rule 14.1.
- 14.4 The Ordinary Pay of a Worker as deemed by the Trustee in accordance with Rule 14 will constitute the Ordinary Pay of the Worker for the purpose of calculating a Long Service Leave Charge in accordance with these Rules, notwithstanding anything to the contrary in these Rules.

15. Trustee may estimate Long Service Leave Charge

15.1 When a Long Service Leave Charge can be estimated

The Trustee may at any time estimate the Long Service Leave Charge payable by an Employer for a Return Period where:

- 15.1.1 it appears to the Trustee, based on information available to it, that the Employer is liable to pay Long Service Leave Charges to the Trustee for that Return Period; and
- 15.1.2 the Employer has:
 - (a) not lodged a Long Service Leave Return for that Return Period; or
 - (b) lodged a Long Service Leave Return for that Return Period, but the Long Service Leave Return contains insufficient information for the Trustee to calculate the Long Service Leave Charge in accordance with Rule 13.

15.2 Procedure for estimating a Long Service Leave Charge

- 15.2.1 In estimating a Long Service Leave Charge in accordance with Rule 15.1, the Trustee may inform itself in any way it sees fit.
- 15.2.2 When the Trustee has made an estimate in accordance with Rule 15.2.1, it must notify the Employer of that estimate.
- 15.2.3 The Employer may object to the Trustee's estimate by providing a notice in writing which:
 - (a) sets out the reasons for the objection;
 - (b) provides evidence in support of those reasons; and
 - (c) is received by the Trustee within 28 days of the date of receipt by the Employer of the estimate.
- 15.2.4 Where the Trustee receives no objection in accordance with Rule 15.2.3, the Trustee's estimate of the Long Service Leave Charge notified to the Employer in accordance with Rule 15.2.1 will be deemed to be the amount of the Long Service Leave Charge owing by the Employer in accordance with Rule 12 for the relevant Return Period.
- 15.2.5 Where the Trustee receives an objection provided in accordance with Rule 15.2.3, the Trustee must:
 - (a) consider the objection;
 - (b) decide whether the Trustee's estimate should be affirmed or varied; and
 - (c) notify the Employer of the Trustee's final estimate.
- 15.2.6 Where the Trustee receives an objection in accordance with Rule 15.2.3, the Trustee's final estimate of the Long Service Leave Charge notified to the Employer in accordance with Rule 15.2.5 will be deemed to be the amount of the Long Service Leave Charge owing by the Employer in accordance with Rule 12 for the relevant Return Period.

15.3 Identification of Worker

- 15.3.1 Where:
 - (a) the Trustee makes an estimate in accordance with Rule 15.2 in respect of Construction Work performed by a Worker for an Employer; and
 - (b) the Worker could not be identified at the time the Trustee made the estimate,

a Worker employed by the Employer may apply to the Trustee for a determination that some or all of the Long Service Leave Charge paid by the Employer in accordance with that estimate was paid in respect of Service by that Worker.

- 15.3.2 Where the Trustee determines that an applicant in accordance with Rule 15.3.1 is the Worker who performed the work in respect of which a Long Service Leave Charge was estimated, the period of that Service will be taken into account for the purpose of calculating that Worker's Continuous Service in the Construction Industry.

Part 5 – Working Sub-Contractors’ obligation to register and option to pay Long Service Leave Charge

16. Registration

A Working Sub-Contractor must register as a Working Sub-Contractor with the Trustee, if the Working Sub-Contractor carries out Construction Work for more than 5 days in a calendar month.

17. Election by a Working Sub-Contractor to pay Long Service Leave Charge

- 17.1 A Working Sub-Contractor may elect to pay a Long Service Leave Charge in respect of Construction Work performed by the Working Sub-Contractor by giving notice in writing to the Trustee.
- 17.2 Part 5 of these Rules applies to a Working Sub-Contractor who has made an election in accordance with Rule 17.1, until the Working Sub-Contractor is deemed to have revoked that election in accordance with Rule 17.3.
- 17.3 A Working Sub-Contractor will be deemed to have revoked an election made in accordance with Rule 17.1 where the Working Sub-Contractor gives notice in writing to the Trustee of the Working Sub-Contractor’s intention to revoke that election.

18. Payment of Long Service Leave Charge

18.1 Liability to pay Long Service Leave Charge

A Working Sub-Contractor who has elected to pay a Long Service Leave Charge in accordance with Rule 17.1 must pay to the Trustee a Long Service Leave Charge calculated in accordance with Rule 19 within the time specified Rule 18.2.

18.2 Payment of Long Service Leave Charge by a Working Sub-Contractor

- 18.2.1 Where a Working Sub-Contractor is liable to pay a Long Service Leave Charge in accordance with Rule 18.1, the Trustee must, in respect of each Return Period:
- (a) calculate, in accordance with Rule 19, the amount of the Long Service Leave Charge payable by the Working Sub-Contractor for the Return Period; and
 - (b) notify the Working Sub-Contractor in writing of the amount of the Long Service Leave Charge so calculated.
- 18.2.2 Subject to Rule 18.2.3, a Working Sub-Contractor must pay to the Trustee the amount specified in the notice issued by the Trustee in accordance with Rule 18.2.1(b) within 14 days of the date of the notice.
- 18.2.3 Where a Working Sub-Contractor who has made an election to pay a Long Service Leave Charge in accordance with Rule 17.1:
- (a) is also a Worker for any part of a Return Period; and
 - (b) an Employer has paid a Long Service Leave Charge to the Trustee in respect of the person’s work as a Worker for that Return Period,

the Working Sub-Contractor is not obliged under Rule 18.2.2 to pay a Long Service Leave Charge in respect of the Construction Work for which the Long Service Leave Charge was paid.

19. Amount of Long Service Leave Charge for Working Sub-Contractors

19.1 Prescribed Rate

19.1.1 The Board may determine one or more Prescribed Rates from time to time by Special Resolution.

19.1.2 Where the Board has determined more than one Prescribed Rate, a Working Sub-Contractor must elect one Prescribed Rate by notice in writing to the Trustee.

19.1.3 The Trustee must give all Working Sub-Contractors notice in writing of any change in any Prescribed Rate, not less than 2 months prior to the change taking effect.

19.2 Calculating amount payable

The amount of the Long Service Leave Charge payable by a Working Sub-Contractor for a Return Period is the Prescribed Rate elected by the Working Sub-Contractor in accordance with Rule 19.1.2, multiplied by the number of calendar months in the Return Period.

20. Refund of Long Service Leave Charge upon revocation of election

Where:

20.1 a Working Sub-Contractor revokes an election to pay a Long Service Leave Charge in accordance with Rule 17.3; and

20.2 the Working Sub-Contractor gives notice in writing to the Trustee that the Working Sub-Contractor requires a refund of the Long Service Leave Charge paid by the Working Sub-Contractor,

the Trustee must pay to the Working Sub-Contractor from the Fund the total amount of any Long Service Leave Charge paid by the Working Sub-Contractor to the Trustee, less the amount of any Long Service Leave Benefit or Payment in Lieu already paid by the Trustee to the Working Sub-Contractor in relation to the period for which the refund is sought.

Part 6 – Application to parties outside Victoria

21. Workers Carrying out Construction Work outside Victoria

An Employer may pay to the Trustee a Long Service Leave Charge calculated in accordance with these Rules in respect of Construction Work carried out by a Worker in any place outside Victoria (whether elsewhere in Australia or outside Australia) if:

- 21.1 the Employer also employs Workers to carry out Construction Work in Victoria; and
- 21.2 a Long Service Leave Charge would have been payable in respect of the Construction Work carried out by the Worker if it had been carried out in Victoria.

22. Working Sub-Contractors carrying out Construction Work outside Victoria

A Working Sub-Contractor may pay to the Trustee a Long Service Leave Charge in respect of Construction Work carried out by the Working Sub-Contractor in any place outside Victoria (whether elsewhere in Australia or outside Australia) if:

- 22.1 the Working Sub-Contractor also carries out Construction Work in Victoria; and
- 22.2 the Working Sub-Contractor has made an election in accordance with Rule 17.1; and
- 22.3 a Long Service Leave Charge would have been payable in respect of the Construction Work carried out by the Working Sub-Contractor if it had been carried out in Victoria.

23. Exemption from Long Service Leave Return and Long Service Leave Charge Obligations

23.1 An Employer that:

- 23.1.1 is domiciled or has its principal place of business in a state or territory within Australia, other than Victoria, and employs Workers to perform Construction Work in Victoria; or
- 23.1.2 is domiciled or has its principal place of business in Victoria and employs Workers to perform Construction Work in Victoria and in a state or territory in Australia other than Victoria,

may apply to the Trustee to be exempted from the requirement in Part 4 to lodge a Long Service Leave Return and pay a Long Service Leave Charge in respect of any Worker or class of Workers employed by the Employer to perform Construction Work in Victoria.

23.2 The Trustee may grant an exemption from the requirement to lodge a Long Service Leave Return and pay Long Service Leave Charge in respect of a Worker or class of Workers if it is satisfied that:

- 23.2.1 a like scheme for the payment of long service leave benefits in a state or territory other than Victoria applies to the Worker or class of Workers; and
- 23.2.2 the Employer is or will commence making payments to that like scheme in respect of the Worker or class of Workers.

23.3 The Trustee may at any time, in its discretion, revoke any exemption granted by it in accordance with Rule 23.2.

Part 7 – Entitlement to a Long Service Leave Benefit

24. Entitlement of Worker

24.1 Subject to Rules 24.5 and 25.1, the Trustee must pay a Long Service Leave Benefit to a Worker if the Worker has:

24.1.1 completed:

- (a) wholly prior to 30 June 2002, 10 years of Continuous Service; or
- (b) wholly after 1 July 2002, 7 years of Continuous Service; and

24.1.2 provided to the Trustee written notification of:

- (a) the Worker's request for payment of a Long Service Leave Benefit;
- (b) the Worker's intention to take Long Service Leave;
- (c) the date on which such leave will commence; and
- (d) the length of Long Service Leave being taken, which must be not less than one week.

24.2 Subject to Rule 25, the amount of a Worker's Long Service Leave Benefit in accordance with Rule 24.1 is:

24.2.1 in respect of Continuous Service wholly prior to 30 June 2002, an amount equal to 1/60th of that Continuous Service, at the rate of the Worker's Ordinary Pay, calculated in accordance with Part 8; and

24.2.2 in respect of Continuous Service wholly after 1 July 2002, an amount equal to 1/40th of that Continuous Service, at the rate of the Worker's Ordinary Pay, calculated in accordance with Part 8.

24.3 Where a Worker's Continuous Service was carried out partly prior to and including 30 June 2002 and partly on and after 1 July 2002, the Trustee must pay a Long Service Leave Benefit to the Worker if the Worker has:

24.3.1 completed 7 years of Continuous Service; and

24.3.2 provided to the Trustee written notification of:

- (a) the Worker's request for payment of a Long Service Leave Benefit; and
- (b) the Worker's intention to take Long Service Leave;
- (c) the date on which such leave will commence; and
- (d) the length of Long Service Leave being taken, which must be not less than one week.

24.4 The amount of a Worker's Long Service Leave Benefit in accordance with Rule 24.3 is the total of:

- 24.4.1 in respect of the Continuous Service that was carried out prior to and including 30 June 2002, an amount equal to 1/60th of that Continuous Service, at the rate of the Worker's Ordinary Pay, calculated in accordance with Part 8; and
- 24.4.2 in respect of the Continuous Service that was carried out on and after 1 July 2002, an amount equal to 1/40th of that Continuous Service, at the rate of the Worker's Ordinary Pay, calculated in accordance with Part 8.
- 24.5 Where a Worker is a director of an Employer and the Employer has failed to pay any Long Service Leave Charge payable to the Trustee under these Rules (whether in respect of that Worker or any other Worker), the Trustee is not obliged to pay any Long Service Leave Benefit or Payment in Lieu to that Worker until that outstanding amount has been paid by the Employer.

25. Payment of Long Service Leave Benefit to Worker on Notification of Long Service Leave

- 25.1 Where the length of the Long Service Leave intended to be taken by a Worker and notified to the Trustee in accordance with Rules 24.1.2(d) or 24.3.2(d) is:
- 25.1.1 a period equal to or greater than the Worker's Leave Entitlement Period, the Trustee must pay the Long Service Leave Benefit to the Worker in full; or
- 25.1.2 a period which is less than the Worker's Leave Entitlement Period, the Trustee must only pay to the Worker the proportion of the Long Service Leave Benefit that the length of Long Service leave to be taken bears to the Worker's Leave Entitlement Period.
- 25.2 Where a Worker is only entitled to be paid a proportion of the Worker's Long Service Leave Benefit in accordance with Rule 25.1.2, the Worker will be entitled to be paid the balance of the Worker's Long Service Leave Benefit by making a further request in accordance with Rules 24.1.2 or 24.3.2(d), in which case Rules 25.1.2 and this Rule 25.2 will reapply.
- 25.3 The Trustee must pay the Long Service Leave Benefit to the Worker once it has received all of the information required to be provided by the Worker to the Trustee in accordance with Rule 24.1.2.
- 25.4 In respect of a written notification provided by a Worker to the Trustee in accordance with Rule 24.1.2 prior to 13 September 2016, Rule 25 of these Rules, as it existed at the date of the notification will continue to apply and remain in force.

26. Entitlement of Working Sub-Contractor

- 26.1 Subject to Rule 27, the Trustee must pay a Long Service Leave Benefit to a Working Sub-Contractor if the Working Sub-Contractor has:
- 26.1.1 made an election in accordance with Rule 17.1;
- 26.1.2 paid a Long Service Leave Charge to the Trustee in accordance with these Rules;
- 26.1.3 after having made an election in accordance with Rule 17.1, completed:
- (a) wholly prior to 30 June 2002, 10 years of Continuous Service; or
- (b) wholly after 1 July 2002, 7 years of Continuous Service; or

- (c) partly prior to and including 30 June 2002 and partly on and after 1 July 2002, 7 years of Continuous Service; and

26.1.4 provided to the Trustee written notification of:

- (a) the Working Sub-Contractor's request for payment of a Long Service Leave Benefit;
- (b) the Working Sub-Contractor's intention to take Long Service Leave;
- (c) the date on which such leave will commence; and
- (d) the length of Long Service Leave being taken, which must be not less than one week.

26.2 Subject to Rule 27, the amount of the Working Sub-Contractor's Long Service Leave Benefit to be paid by the Trustee to a Working Sub-Contractor in accordance with Rule 26.1 is the total amount of the Long Service Leave Charge paid by the Working Sub-Contractor for the period of Continuous Service, together with interest calculated in accordance with Rule 28.

27. Payment of Long Service Leave Benefit to Working Sub-Contractor on Notification of Long Service Leave

27.1 Where the length of the Long Service Leave intended to be taken and notified to the Trustee in accordance with Rule 26.1.4(d) is:

27.1.1 a period equal to or greater than:

- (a) in respect of Continuous Service wholly prior to 30 June 2002, 1/60th of the Working Sub-Contractor's Continuous Service; or
- (b) in respect of Continuous Service wholly after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service; or
- (c) in respect of Continuous Service partly prior to and including 30 June 2002 and partly on and after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service,

the Trustee must pay the Long Service Leave Benefit to the Working Sub-Contractor in full; or

27.1.2 a period which is less than:

- (a) in respect of Continuous Service wholly prior to 30 June 2002, 1/60th of the Working Sub-Contractor's Continuous Service; or
- (b) in respect of Continuous Service wholly after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service; or
- (c) in respect of Continuous Service partly prior to and including 30 June 2002 and partly on

the Trustee must only pay to the Working Sub-Contractor the proportion of the Long Service Leave Benefit that the length of Long Service Leave to be taken bears to the Worker's Leave Entitlement Period.

- 27.2 Where a Working Sub-Contractor is only entitled to be paid a proportion of the Working Sub-Contractor's Long Service Leave Benefit in accordance with Rule 27.1.2, the Working Sub-Contractor will be entitled to be paid the balance of the Working Sub-Contractor's Long Service Leave Benefit by making a further request in accordance with Rule 26.1.4, in which case Rules 27.1.2 and this Rule 27.2 will reapply.
- 27.3 The Trustee must pay the Long Service Leave Benefit to the Working Sub-Contractor once it has received all of the information required to be provided by the Working Sub-Contractor to the Trustee in accordance with Rule 26.1.4.
- 27.4 In respect of a written notification provided by a Worker to the Trustee in accordance with Rule 26.1.4 prior to 13 September 2016, Rule 27 of these Rules, as it existed at the date of the notification will continue to apply and remain in force.

28. Calculation of interest payable to Working Sub-Contractor

28.1 Interest calculated on all monies

Where interest is payable by the Trustee to a Working Sub-Contractor in accordance with Rules 26.2, 29.2.2, 38.1.2 or 39.1.2, the interest must be calculated on all monies standing to the credit of the Working Sub-Contractor, including, but not limited to, any interest previously credited to the Working Sub-Contractor.

28.2 Period for calculation

The interest must be calculated from:

- 28.2.1 the date of receipt of the payment of the Long Service Leave Charges; or
- 28.2.2 the date of the crediting of interest paid in the past to the credit of the Working Sub-Contractor,

as the case may be.

28.3 Rate of interest

- 28.3.1 The rate of interest to be paid in respect of any Financial Year will be determined by the Trustee by no later than 31 August of the following Financial Year.
- 28.3.2 The Trustee will determine the rate of interest in respect of any Financial Year by:
- (a) calculating the gross earnings of the Fund for that Financial Year as a percentage of the total amount of the Fund; and
 - (b) adjusting that percentage to take account of the expenses incurred in administering the Fund (where such adjustment does not exceed 25% of the earning rate of the Fund) to arrive at an adjusted rate of interest.
- 28.3.3 The Trustee may determine an interim rate from time to time, prior to determination of the rate of interest in accordance with Rule 28.3.1.

29. Entitlement of person as both Worker and Working Sub-Contractor

- 29.1 Subject to Rule 30, the Trustee must pay a Long Service Leave Benefit to a person if the person has:

- 29.1.1 carried out work as a Worker; and
 - 29.1.2 during the same period, also carried out work as a Working Sub-Contractor, in respect of which work the person has:
 - (a) made an election in accordance with Rule 17.1; and
 - (b) paid Long Service Leave Charges as a Working Sub-Contractor; and
 - 29.1.3 completed at least 7 years of Continuous Service in total, taking into account work carried out as a Worker and work carried out as a Working Sub-Contractor; and
 - 29.1.4 provided to the Trustee written notification of:
 - (a) the person's request for payment of a Long Service Leave Benefit; and
 - (b) the person's intention to take Long Service Leave;
 - (c) the date on which such leave will commence; and
 - (d) the length of Long Service Leave being taken, which must not be less than one week.
- 29.2 The amount of a person's Long Service Leave Benefit in accordance with Rule 29.1 will be the total of:
- 29.2.1 in respect of the period of Continuous Service for which the person was a Worker:
 - (a) for any period prior to and including 30 June 2002, an amount equal to 1/60th of that Continuous Service, to be paid at the rate of the person's Ordinary Pay, calculated in accordance with Part 8;
 - (b) for any period after 30 June 2002, an amount equal to 1/40th of that Continuous Service, to be paid at the rate of the person's Ordinary Pay, calculated in accordance with Part 8; and
 - (c) for any period partly prior to and including 30 June 2002 and partly on and after 1 July 2002:
 - (i) in respect of the Continuous Service that was carried out prior to and including 30 June 2002, an amount equal to 1/60th of that Continuous Service, at the rate of the Worker's Ordinary Pay, calculated in accordance with Part 8; and
 - (ii) in respect of the Continuous Service that was carried out on and after 1 July 2002, an amount equal to 1/40th of that Continuous Service, at the rate of the Worker's Ordinary Pay, calculated in accordance with Part 8; and
 - 29.2.2 in respect of the period of Continuous Service for which the person was a Working Sub-Contractor, the total amount of Long Service Leave Charges paid by the Working Sub-Contractor for that Continuous Service, together with interest calculated in accordance with Rule 28.

30. Payment to person as both Worker and Working Sub-Contractors

30.1 Where the length of the Long Service Leave intended to be taken and notified to the Trustee in accordance with Rule 29.1.4(d) is:

30.1.1 in respect of the period of Continuous Service for which the person was a Worker:

- (a) a period equal to or greater than the person's Leave Entitlement Period, the Trustee must pay the Long Service Leave Benefit to the person in full; or
- (b) a period which is less than the person's Leave Entitlement Period, the Trustee must only pay to the person the proportion of the Long Service Leave Benefit that the length of Long Service Leave taken bears to the person's Leave Entitlement Period; and

30.1.2 in respect of the period of Continuous Service for which the person was a Working Sub-Contractor:

- (a) a period equal to or greater than:
 - (i) in respect of Continuous Service wholly prior to 30 June 2002, 1/60th of the Working Sub-Contractor's Continuous Service; or
 - (ii) in respect of Continuous Service wholly after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service; or
 - (iii) in respect of Continuous Service partly prior to and including 30 June 2002 and partly on and after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service,

the Trustee must pay the Long Service Leave Benefit to the person in full when the person commences Long Service Leave (or as soon as practicable thereafter); or

- (b) a period which is less than:
 - (i) in respect of Continuous Service wholly prior to 30 June 2002, 1/60th of the Working Sub-Contractor's Continuous Service; or
 - (ii) in respect of Continuous Service wholly after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service; or
 - (iii) in respect of Continuous Service partly prior to and including 30 June 2002 and partly on and after 1 July 2002, 1/40th of the Working Sub-Contractor's Continuous Service,

the Trustee must only pay to the person the proportion of the Long Service Leave Benefit that the length of Long Service Leave taken bears to the person's Leave Entitlement Period.

30.2 Where a person who is both a Worker and a Working Sub-Contractor is only entitled to be paid a proportion of the person's Long Service Leave Benefit in accordance with Rules 30.1.1(b) or 30.1.2(b), the person will be entitled to be paid the balance of the Working Sub-Contractor's Long Service Leave Benefit by making a further request in accordance with Rule 29.1.4 in which case Rules 30.1.1(b), 30.1.2(b) and this Rule 30.2 will reapply.

- 30.3 The Trustee must pay the Long Service Leave Benefit to a person who is both a Worker and a Working Sub-Contractor once it has received all of the information required to be provided by that person to the Trustee in accordance with Rule 29.1.4.
- 30.4 In respect of a written notification provided by a person to the Trustee in accordance with Rule 29.1.4 prior to 13 September 2016, Rule 30 of these Rules, as it existed at the date of the notification will continue to apply and remain in force.

31. Calculation of Continuous Service for Workers

31.1 Continuous Service

- 31.1.1 **Continuous Service** for a Worker means all of the Service of the Worker, unless broken.
- 31.1.2 A Worker's Continuous Service will be broken by any interruption to a Worker's performance of Construction Work of:
- (a) more than 4 years, where the interruption started on or after 1 December 1995; or
 - (b) 2 years or more, where the interruption started and continued for at least 2 years before 1 December 1997 (whether the interruption ended before or after 1 December 1997) and before which the Worker was performing Construction Work; or
 - (c) 9 months or more, where the interruption started before and continued for at least 9 months before 1 August 1983 (whether the interruption ended before or after 1 August 1983) and before which the Worker was performing Building Trades Work.
- 31.1.3 A period which is included in the calculation of a period of Service for a Worker by reason of Rule 31.2.3 will not constitute an interruption to the Worker's performance of Construction Work for the purpose of Rule 31.1.2.
- 31.1.4 Notwithstanding Rule 31.1.2 above, where the Trustee considers there are special circumstances, the Trustee may deem that any interruption to a Worker's performance of Construction Work does not break the Continuous Service of the Worker.

31.2 Meaning of Service

- 31.2.1 **Service** by a Worker means, subject to Rules 31.2.2, 31.2.3 and 31.2.4, the performance of Construction Work by a Worker.
- 31.2.2 Subject to Rules 31.2.3 and 31.2.4, a day on which a Worker has performed Construction Work will constitute a day of Service, where the day of work occurs:
- (a) for Workers whose days of work are fixed by the Worker's Terms of Employment, on one of the days of work so fixed; or
 - (b) for Workers whose days of work are not fixed by the Worker's Terms of Employment, on any day of the week.
- 31.2.3 The following periods are included in the calculation of the period of Service by a Worker:

- (a) any period of annual leave or Long Service Leave where immediately prior to that leave the Worker performed Construction Work;
- (b) any absence from work of 48 weeks or less because of illness or injury which occurred when the Worker was employed in the Construction Industry if:
 - (i) the Worker did not undertake any paid employment during that period; and
 - (ii) the Worker's absence is certified to be necessary by a registered medical practitioner within the meaning of the *Health Practitioner Regulation National Law (Victoria) Act 2009* where the Trustee has requested such a certificate;
- (c) any other paid absence from work approved by the Worker's Employer including, but not limited to, paid carer's leave, adoption leave, maternity leave, paternity leave or compassionate leave;
- (d) any interruption to, or ending of, employment by any Employer, if the Trustee is satisfied that the Employer brought about the interruption or ending with the intention of avoiding the Employer's obligations in respect of Long Service Leave or annual leave;
- (e) any paid or unpaid absence from work by the Worker for the purpose of:
 - (i) jury service, including but not limited to attendance for jury selection; or
 - (ii) appearing to give evidence before any court or body;
- (f) any period of Construction Work performed as a Working Sub-Contractor where the Working Sub-Contractor:
 - (i) made an election in accordance with Rule 17.1; and
 - (ii) paid Long Service Leave Charges in respect of that Construction Work in accordance with these Rules, and those Long Service Leave Charges remain in the Fund;
- (g) any period of accrued but untaken annual leave paid by the Employer to the Worker on the cessation of the Worker's employment;
- (h) any period during which:
 - (i) the Worker is a director of an Employer; and
 - (ii) any amount payable by the Employer to the Trustee in accordance with the Act or these Rules (in respect of that Worker or any other Worker) had been outstanding but was subsequently paid to the Trustee;
- (i) any period during which the Worker performed Building Trades Work in the Construction Industry before 21 December 1973 where:
 - (i) on 21 December 1973, the Worker was employed by an Employer to perform Building Trades Work; and

- (ii) the period of service occurred in the employment of that same Employer; and
- (j) any period during which the Worker performed Electrical Trades Work or Metal Trades Work in the Construction Industry before 1 March 1978, unless:
 - (i) on 1 March 1978 the Worker was employed by an Employer to perform Electrical Trades Work or Metal Trades Work; and
 - (ii) the period of service occurred in the employment of that same Employer.

31.2.4 The following periods are not included in the calculation of the period of Service by a Worker:

- (a) any interruption arising directly or indirectly from an industrial dispute;
- (b) any period during which the Worker was stood down due to slackness of trade;
- (c) any continuous absence from work of more than 4 years because of illness or injury which occurred during a period when the Worker was performing Construction Work if the absence is certified to be necessary by a registered medical practitioner within the meaning of the *Health Practitioner Regulation National Law (Victoria) Act 2009* where the Trustee has requested such a certificate;
- (d) any absence from work approved by the Employer (including but not limited to unpaid adoption, maternity or paternity leave) other than an absence under Rule 31.2.3;
- (e) any service as a member of the naval, military or air forces (other than as a member of the permanent forces) of the Commonwealth of Australia;
- (f) any service as a full time officer of a registered organisation (within the meaning of the *Fair Work (Registered Organisations) Act 2009* (Cth)) that represents Workers employed to perform Construction Work of any kind;
- (g) any break in a Worker's performance of Construction Work of 4 years or less, other than an absence under Rule 31.2.3;
- (h) any break in a Worker's performance of Construction Work where the Trustee has deemed that the Continuous Service of the Worker should not be broken, in accordance with Rule 31.1.3;
- (i) any period during which the Worker's Employer was not liable to pay a Long Service Leave Charge in respect of that Worker;
- (j) any period during which the Worker performed Construction Work outside Victoria, unless Long Service Leave Charges were paid in accordance with Rule 21 in respect of the Worker while the Worker was so employed;
- (k) any period for which:
 - (i) the Worker was a director of an Employer; and

- (ii) any amount payable by the Employer to the Trustee in accordance with the Act or these Rules (in respect of that Worker or any other Worker) has not been paid;
 - (l) any calendar month in which the Worker is employed by an Employer to carry out Construction Work for 5 days or less;
 - (m) any period during which the Worker performed Building Trades Work in the Construction Industry before 21 December 1973, except where:
 - (i) on 21 December 1973, the Worker was employed by an Employer to perform Building Trades Work; and
 - (ii) the period of service occurred in the employment of that same Employer; and
 - (n) any period during which the Worker performed Electrical Trades Work or Metal Trades Work in the Construction Industry before 1 March 1978, except where:
 - (i) on 1 March 1978, the Worker was employed by an Employer to perform Electrical Trades Work or Metal Trades Work; and
 - (ii) the period of service occurred in the employment of that same Employer.
- 31.2.5 For the purposes of Rules 31.2.3(i), 31.2.3(j), 31.2.4(m) and 31.2.4(n):
- (a) where a Worker was employed by a Corporation, the Worker is deemed to have been employed by that Corporation during any period in which he or she was employed by a related body corporate, within the meaning of section 50 of the *Corporations Act 2001* (Cth); and
 - (b) where a Worker was a transferring employee within the meaning of the *Fair Work Act 2009* (Cth), the Worker's Service with the old Employer will be deemed to be Service with the new Employer.

32. Calculation of Continuous Service for work prior to 1965

Notwithstanding anything to the contrary in Rules 24, 38 and 39, for the purpose of determining the amount of Long Service Leave Benefit or Payment In Lieu to which a Worker or a Worker's personal representative is entitled in respect of any Service beginning before 1 January 1965 and ending after that date, so much of the Continuous Service as was completed before that date is to be reduced by one quarter.

33. Calculating Continuous Service where non-Construction Industry work carried out

Despite any provision in these Rules to the contrary, when calculating the entitlement of a Worker or Working Sub-Contractor to payment of a Long Service Leave Benefit, the Trustee must, for the purpose of determining the period of Continuous Service carried out by the Worker or Working Sub-Contractor, include any period of work that was:

- 33.1 carried out on or before 31 October 1999; and
- 33.2 recorded in the Records as being Construction Work; and

33.3 was not, in fact, Construction Work.

34. One year of Continuous Service

- 34.1 For the purpose of determining the amount of a Worker's entitlement to a Long Service Leave Benefit in accordance with Rule 24 or Rule 29, a period of Service that constitutes Continuous Service for at least 220 days within a Financial Year or calendar year (whichever applies in accordance with Rule 34.3) will constitute one year of Continuous Service.
- 34.2 Where a Worker, during a Financial Year or calendar year (whichever applies in accordance with Rule 34.3) has not performed Service that constitutes Continuous Service for at least 220 days, the period of Continuous Service will be the actual number of days of Service performed.
- 34.3 The Trustee may determine whether a Financial Year or a calendar year will be used for Rules 34.1 and 34.2.

35. Calculation of Continuous Service for Working Sub-Contractors

35.1 Continuous Service

35.1.1 **Continuous Service** for a Working Sub-Contractor means all of the Service of the Working Sub-Contractor, unless broken.

35.1.2 The Continuous Service of a Working Sub-Contractor will be broken by

any interruption to a Working Sub-Contractor's performance of Construction Work of more than 4 years, where the interruption started on or after 1 December 1995.

35.1.3 The Continuous Service of a Working Sub-Contractor will not be broken by:

- (a) any failure to pay a Long Service Leave Charge to the Trustee in accordance with these Rules before 1 April 1980, where the Working Sub-Contractor was registered in accordance with section 11 of the *Building Industry Long Service Leave Act 1975 (Vic)*;
- (b) any failure to pay a Long Service Leave Charge to the Trustee in accordance with these Rules for a period which started on or after 1 December 1995, where during that period there has not been an interruption to the Working Sub-Contractor's performance of Construction Work of more than 4 years; or
- (c) any service by a Working Sub-Contractor as a Worker which would constitute Service in accordance with these Rules.

35.2 Meaning of Service

35.2.1 **Service** by a Working Sub-Contractor means, subject to Rules 35.2.2 and 35.2.3, the performance of Construction Work by a Working Sub-Contractor.

35.2.2 The following periods are included in the calculation of the period of Service by a Working Sub-Contractor:

- (a) any period before 1 April 1980 where the Working Sub-Contractor did not pay a Long Service Leave Charge to the Trustee, but was registered in accordance with section 11 of the *Building Industry Long Service Leave Act 1975* (Vic); and

any service by a Working Sub-Contractor as a Worker which would constitute Service in accordance with these Rules.

35.2.3 The following periods are not included in the calculation of the period of Service by a Working Sub-Contractor:

- (a) any period in respect of which the Working Sub-Contractor had not made an election in accordance with Rule 17.1, unless the Trustee determines that such a period should be included;
- (b) if the Working Sub-Contractor performs Construction Work for less than 5 days in a calendar month, those days, unless the Trustee determines that such a period should be included;
- (c) any period for which the Working Sub-Contractor did not pay a Long Service Leave Charge to the Trustee in accordance with these Rules; and
- (d) any period of Long Service Leave.

36. Calculation of Continuous Service where person is both a Worker and a Working Sub-Contractor

Notwithstanding any other provisions in these Rules, a person will not, by reason of performing Construction Work as a Working Sub-Contractor and as a Worker during any Return Period, be credited by the Trustee with a period of Continuous Service in the Construction Industry for the Return Period that exceeds the actual number of days in that Return Period.

37. Calculation of payment where Long Service Leave has been previously taken

37.1 Taking into account payments made under the Rules

Where a Worker, Working Sub-Contractor, a person who is both a Worker and Working Sub-Contractor, or the personal representative of a deceased such person:

- 37.1.1 is eligible in accordance with these Rules to be paid a Long Service Leave Benefit or a Payment In Lieu; and
 - (a) has previously been paid a Long Service Leave Benefit or a Payment In Lieu; or
 - (b) has otherwise taken Long Service Leave or received a payment in lieu of any other Long Service Leave,

the amount of the previous:

37.1.2 Long Service Leave Benefit;

37.1.3 Payment In Lieu;

37.1.4 any other Long Service Leave taken; or

37.1.5 payment in lieu of any other Long Service Leave,

must be taken into account when calculating the person's entitlement to a Long Service Leave Benefit or Payment In Lieu to be paid from the Fund.

37.2 Taking into account payments made other than under the Rules

Where a Worker or a Working Sub-Contractor has, other than in accordance with these Rules, already received a payment in respect of Long Service Leave or a payment in lieu of such leave from an Employer or other person or entity in respect of a period of the person's Continuous Service in the Construction Industry, those payments will be:

37.2.1 deemed to be a Long Service Leave Benefit paid in accordance with these Rules; and

37.2.2 deducted from any remaining entitlement to a Long Service Leave Benefit in accordance with these Rules.

37.3 Avoiding duplication of payments

If a Worker or Working Sub-Contractor receives, contrary to Rule 37.2, in respect of a period of the person's Continuous Service in the Construction Industry, both:

37.3.1 a Long Service Leave Benefit or Payment In Lieu paid in accordance with these Rules; and

37.3.2 a payment in respect of Long Service Leave or a payment in lieu of such leave other than in accordance with these Rules,

then the Trustee will be entitled to require that the amount of the Long Service Leave Benefit or Payment In Lieu made in accordance with these Rules be repaid to it by the Worker or Working Sub-Contractor in accordance with Rule 49.2.

38. Payment In Lieu on leaving the Construction Industry or unemployment

38.1 Entitlement to payment

38.1.1 The Trustee must make a Payment In Lieu to a Worker if the Worker has carried out sufficient Continuous Service such that the Worker would have been entitled to receive payment from the Trustee of a Long Service Leave Benefit and:

(a) the Worker leaves the Construction Industry (otherwise than by death) before such Long Service Leave Benefit has been paid; or

(b) the Worker is currently unemployed; and

(c) the Worker has made a written request for a Payment In Lieu.

38.1.2 The Trustee must make a Payment in Lieu to a Working Sub-Contractor if the Working Sub-Contractor:

(a) elected to pay a Long Service Leave Charge;

(b) has paid a Long Service Leave Charge in accordance with Part 5 of these Rules;

- (c) has left the Construction Industry;
- (d) is not entitled to any Long Service Leave Benefit or Payment In Lieu in accordance with any other provision of these Rules, in respect of the Service for which the relevant Long Service Leave Charges were paid; and
- (e) has made a written request for a Payment In Lieu.

38.1.3 A Working Sub-Contractor will be deemed to have left the Construction Industry for the purpose of Rule 38.1.2 where the Working Sub-Contractor did not pay Long Service Leave Charges in accordance with these Rules for a continuous period of 2 years prior to 1 December 1997.

38.2 Calculation of payment

38.2.1 Where a Payment In Lieu is payable by the Trustee to a Worker in accordance with Rule 38.1.1, the amount payable will be calculated in accordance with Rule 24 or Rule 29.2, as the case may be.

38.2.2 Where a Payment In Lieu is payable by the Trustee to a Working Sub-Contractor in accordance with Rule 38.1.2, the amount payable will be calculated as follows:

- (a) where the Working Sub-Contractor has left the Construction Industry because of illness or incapacity (or because of other circumstances, at the discretion of the Trustee), the amount payable is calculated in accordance with Rule 26.2 as though the payment was being made in accordance with Rule 26.1; or
- (b) where the Working Sub-Contractor has left the Construction Industry because of another reason, the amount payable will be the total of the amount of Long Service Leave Charges paid by the Working Sub-Contractor under Part 5 of these Rules.

38.2.3 For the purpose of this Rule 38.2, when determining the date on which a person leaves the Construction Industry, the Trustee must disregard the period of any Long Service Leave to which a person is entitled but has not taken, except for the purpose of calculating a period of Continuous Service.

39. Payment In Lieu on death

39.1 Entitlement to payment

39.1.1 The Trustee must make a Payment In Lieu to the personal representative of a deceased Worker, if the deceased Worker had:

- (a) completed at least 55 days of Continuous Service; and
- (b) died on or after 1 July 2002,

and the deceased Worker's personal representative makes a written request for a Payment In Lieu.

39.1.2 The Trustee must make a Payment In Lieu to the personal representative of a deceased Working Sub-Contractor, if the deceased Working Sub-Contractor had:

- (a) registered as a Working Sub-Contractor;

- (b) elected to pay Long Service Leave Charges; and
- (c) paid Long Service Leave Charges,

and the personal representative of the deceased Working Sub-Contractor makes a written request for a Payment In Lieu.

39.2 Calculation of payment

39.2.1 Where an amount becomes payable by the Trustee to the personal representative of a deceased Worker pursuant to Rule 39.1.1, the amount payable is calculated as follows:

- (a) where the deceased Worker had, prior to death, an entitlement to payment of a Long Service Leave Benefit in accordance with Rule 24 or Rule 29, the amount of any Payment In Lieu payable in accordance with Rule 39.1.1 is calculated as though the payment was being made in accordance with Rule 24 or Rule 29, as the case may be; or
- (b) where the deceased Worker did not have, prior to death, an entitlement to payment of a Long Service Leave Benefit in accordance with Rule 24 or Rule 29, the amount of any Payment In Lieu payable in accordance with Rule 39.1.1 is calculated on a pro rata basis for the amount of the deceased Worker's Continuous Service.

39.2.2 Where an amount becomes payable by the Trustee to the personal representative of a deceased Working Sub-Contractor pursuant to Rule 39.1.2, the amount payable is calculated in accordance with Rule 26.2, as though the payment was being made in accordance with Rule 26.1.

Part 8 – Calculation of Long Service Leave Benefit

40. When Ordinary Pay is calculated

40.1 Calculating Ordinary Pay for a Long Service Leave Benefit

Subject to Rules 40.4 and 40.5, for the purpose of calculating the amount of any Long Service Leave Benefit payable by the Trustee to a Worker in accordance with Rules 24 or 29, a Worker's Ordinary Pay will be:

- 40.1.1 for a Worker who is, at the date of provision of written notification in accordance with Rule 24.1.2, carrying out Construction Work, the Ordinary Pay of the Worker for work carried out during the Worker's Normal Weekly Number of Hours Work in the week immediately preceding the date on which the Worker provided the written notification to the Trustee in accordance with Rules 24.1.2 or 29.1.4 (whichever applies); or
- 40.1.2 for a Worker who is not, at the date of provision of written notification in accordance with Rule 24.1.2 or Rule 29.1.4, carrying out Construction Work, the Ordinary Pay of the Worker for work carried out during the Worker's Normal Weekly Number of Hours Work in the last week that the Worker carried out Construction Work.

40.2 Calculating Ordinary Pay for a Payment In Lieu on leaving the Construction Industry or unemployment

Subject to Rules 40.4 and 40.5, for the purpose of calculating the amount of any Payment In Lieu payable by the Trustee in accordance with Rule 38.1.1, a Worker's Ordinary Pay will be:

- 40.2.1 for a Worker who was, at the date the Worker became unemployed or at the date the Worker left the Construction Industry, carrying out Construction Work, the Ordinary Pay of the Worker for work carried out during the Worker's Normal Weekly Number of Hours Work in the week immediately preceding that date; or
- 40.2.2 for a Worker who was not, at the date the Worker became unemployed or at the date the Worker left the Construction Industry, carrying out Construction Work, the Ordinary Pay of the Worker for work carried out during the Worker's Normal Weekly Number of Hours Work in the last week that the Worker carried out Construction Work.

40.3 Calculating Ordinary Pay for a Payment In Lieu on death

- 40.3.1 Subject to Rules 40.4 and 40.5, for the purpose of calculating the amount of any Payment In Lieu payable by the Trustee in accordance with Rule 39.1.1, a Worker's Ordinary Pay will be:
 - (a) for a Worker who was, at the date of the Worker's death, carrying out Construction Work, the Ordinary Pay of the Worker for work carried out during the Worker's Normal Weekly Number of Hours Work in the week immediately preceding the date of death; or
 - (b) if the Worker was not carrying out Construction Work at the date of the Worker's death, the Ordinary Pay of the Worker for work carried out during the Worker's Normal Weekly Number of Hours Work in the last week that the Worker carried out Construction Work.

40.4 Averaging Ordinary Pay

In calculating the Ordinary Pay of a Worker under Rules 40.1, 40.2, or 40.3 where no Weekly Number of Hours is fixed by the Worker's Terms of Employment, the Trustee may, in its discretion, deem the Worker's Ordinary Pay to be an amount equal to the Worker's Ordinary Pay for a period of up to 12 months, divided by the number of weeks in that period.

40.5 Indexing Ordinary Pay

In calculating the Ordinary Pay of a Worker under Rules 40.1, 40.2 or 40.3, the Trustee may, in its discretion, index the Worker's Ordinary Pay to account for inflation (if any) during the period between the date of the last week in which the Worker carried out Construction Work and the date on which the Worker or the Worker's personal representative applied in writing for a Long Service Leave Benefit or a Payment In Lieu.

41. Determination that Ordinary Pay should be lesser amount

41.1 Power to determine that Worker's Ordinary Pay should be lesser amount

41.1.1 If the Trustee considers that the Ordinary Pay of a Worker, calculated in accordance with Rule 40 for the purpose of calculating a Long Service Leave Benefit or a Payment in Lieu, is excessive by reason of:

- (a) the nature of the work performed by the Worker at any time material to the calculation; or
- (b) the remuneration that was payable to the Worker in respect of any work performed by the Worker at any time material to the calculation,

the Trustee may determine that the Ordinary Pay of the Worker should be deemed to be a lesser amount.

41.1.2 In making a determination in accordance with Rule 41.1.1, the Trustee may inform itself in any manner it thinks fit.

41.1.3 Where the Trustee has made a determination in accordance with Rule 41.1.1, the Trustee must notify the Worker or the Worker's personal representative of:

- (a) the Trustee's determination and the amount which the Trustee has deemed the Worker's Ordinary Pay to be;
- (b) the reasons for the determination;
- (c) the right of the Worker or the Worker's personal representative to make a written submission to the Trustee that the Worker's Ordinary Pay should be as calculated in accordance with Rule 40; and
- (d) the time within which any written submission must be provided to the Trustee.

41.2 Final determination

41.2.1 Where the Trustee has made a determination in accordance with Rule 41.1.1 and the Worker or the Worker's personal representative has not made any submission to the Trustee by the time required by the Trustee in accordance with Rule 41.1.3(d), the Worker's Ordinary Pay will be the amount determined by the Trustee in accordance with Rule 41.1.1.

- 41.2.2 Where the Trustee has made a determination in accordance with Rule 41.1.1 and the Worker or the Worker's personal representative has made a submission to the Trustee by the time required by the Trustee in accordance with Rule 41.1.3(d), the Trustee must make a final determination to either:
- (a) confirm the determination; or
 - (b) set aside the determination.
- 41.2.3 Where the final determination sets aside the determination made in accordance with Rule 41.1.1, the Trustee must either:
- (a) confirm that the Worker's Ordinary Pay will be calculated in accordance with Rule 40; or
 - (b) determine that the Worker's Ordinary Pay will be a different amount.
- 41.2.4 In making a final determination, the Trustee:
- (a) must have regard to any written submission provided by the Worker or the Worker's personal representative in accordance with Rule 41.1.3(c) where the submission was provided within the time specified by the Trustee; and
 - (b) may otherwise inform itself in any manner as it thinks fit.
- 41.2.5 The Trustee must notify the Worker or the Worker's personal representative of any final determination made by it.
- 41.2.6 The Ordinary Pay of a Worker determined in accordance with this Rule 41 will constitute the Ordinary Pay of the Worker for the purpose of calculating a Long Service Leave Benefit, or a Payment In Lieu, notwithstanding anything to the contrary in these Rules.

42. Determination that Ordinary Pay should be a higher amount

42.1 Power to determine that Worker's Ordinary Pay should be a higher amount

- 42.1.1 If the Trustee considers that the Ordinary Pay of a Worker, calculated in accordance with Rule 40, for the purpose of calculating a Long Service Leave Benefit or a Payment in Lieu, is less than the amount that the Worker would have been paid under:
- (a) the minimum rate of pay in a relevant award or industrial instrument for the kind of work performed by the Worker; or
 - (b) the national minimum wage set by Fair Work Australia,
- for the relevant week, the Trustee may determine that the Ordinary Pay of the Worker should be deemed to be a higher amount.
- 42.1.2 Where the Trustee makes a determination in accordance with Rule 42.1, it may determine the amount of the Ordinary Pay of a Worker in any way it thinks fit, including, but not limited to, by reference to:
- (a) the minimum rate of pay in a relevant award or industrial instrument for the kind of work performed by the Worker; or

(b) the national minimum wage set by Fair Work Australia.

42.1.3 The Trustee must notify the Worker or the Worker's personal representative of any termination made by it in accordance with Rule 42.1.

42.1.4 The Ordinary Pay of a Worker determined in accordance with Rule will 42.1 constitute the Ordinary Pay of the Worker for the purpose of calculating a Long Service Leave Benefit or a Payment In Lieu in accordance with these Rules, notwithstanding anything to the contrary in these Rules.

43. Increase in Worker's pay

Where:

43.1 a Worker's Long Service Leave has commenced or is due to commence on a date specified in a written notification made by the Worker to the Trustee in accordance with Rule 24.1.2 or 29.1.4;

43.2 the Trustee has paid a Long Service Leave Benefit to the Worker in accordance with the Rules; and

43.3 before the end of the dates specified in the Worker's written notification to the Trustee of the Worker's Long Service Leave (or before the end of the relevant proportion of Long Service Leave), the Worker notifies the Trustee and the Trustee is satisfied that since the notification by the Worker of the Worker's Long Service Leave (or since the commencement of the relevant proportion) and the payment by the Trustee of the Long Service Leave Benefit, the Worker's Terms of Employment had changed or would have otherwise entitled the Worker to be paid more remuneration than that used to calculate the Worker's Ordinary Pay for the purpose of calculating the Worker's Long Service Leave Benefit,

the Trustee may:

43.4 recalculate the Worker's Ordinary Pay by reference to the remuneration which would have been payable to the Worker for the week the increase took effect if the Worker was not on Long Service Leave; and

if the Ordinary Pay recalculated in accordance with Rule 43.4 is higher than the Ordinary Pay used to calculate the Long Service Leave Benefit paid to the Worker, pay to the Worker the difference for that part of the period of Long Service Leave to which the increase applies.

43.5 In respect of a written notification provided by a person to the Trustee in accordance with Rule 29.1.4 prior to 13 September 2016, Rule 43 as it existed at the date of the notification will continue to apply and remain in force.

Part 9 – Payments from the Fund

44. Payment of Long Service Leave Benefit or Payments In Lieu

The Trustee must pay from the Fund a Long Service Leave Benefit or a Payment In Lieu when it is obliged to do so in accordance with Part 7 of these Rules.

45. Payment not made for public holidays or annual leave

The amount of a Long Service Leave Benefit to be paid by the Trustee does not include payment for:

45.1 any public holiday in Victoria; or

45.2 any annual leave taken by the Worker or Working Sub-Contractor,

during the period nominated by the Worker or Working Sub-Contractor for the taking of Long Service Leave.

46. Payments in respect of leave entitlements accrued prior to the Act and the Former Act

46.1 Worker's entitlement to payment

Any Long Service Leave Benefit or Payment In Lieu to which a Worker becomes entitled in accordance with these Rules:

46.1.1 in respect of Building Trades Work on or after 21 December 1973; or

46.1.2 in respect of all Construction Work, on or after 1 August 1983,

is payable from the Fund.

46.2 Payments in advance

Where, on or after 1 January 1974 and before 1 February 1977, a Worker:

46.2.1 receives any payment in respect of Long Service Leave;

46.2.2 the payment is made in advance of the Worker becoming entitled to such payment; and

46.2.3 the Worker subsequently completes such Service in the Construction Industry as would have entitled the Worker to such leave or payment at a later date,

that payment will be deemed to:

46.2.4 have been made in respect of leave to which the Worker became entitled on or after 21 December 1973 and before the Effective Date; and

46.2.5 be payment of a Long Service Leave Benefit made in accordance with these Rules.

46.3 No payment from the Fund for leave entitlements prior to 21 December 1973

Notwithstanding anything to the contrary in these Rules, where a Worker has become entitled to Long Service Leave before 21 December 1973:

- 46.3.1 no payment will be made from the Fund in relation to that entitlement; but
- 46.3.2 nothing in this Rule will affect the liability of the Employer to grant any leave not taken or make any payment not made (as the case may be).

47. Payment in respect of leave entitlements under the Former Act

- 47.1 Subject to Rule 46, the Trustee must not make any payment from the Fund in relation to any Long Service Leave or payment in lieu of such leave to which, in accordance with the Former Act, a Worker became entitled before 1 August 1983.
- 47.2 Nothing in Rule 47.1 affects the liability of an Employer to grant such leave not taken or to make any payment not made (as the case may be) in accordance with the Former Act.
- 47.3 The Trustee must not make any payment from the Fund in relation to any entitlement where:
 - 47.3.1 the Worker's entitlement arose on or after 1 August 1983 and before 1 December 1997, in accordance with the Former Act; and
 - 47.3.2 in respect of the entitlement, an equivalent payment was made from the Former Fund.
- 47.4 Nothing in Rule 47.3 affects the liability of the Trustee to make any payment from the Fund where an entitlement arose on or after 1 August 1983 and before 1 December 1997, but in respect of which no payment was made from the Former Fund.
- 47.5 Notwithstanding anything to the contrary in these Rules, the Trustee may make a payment to a Worker, where the Worker:
 - 47.5.1 has completed 15 years Continuous Service in the Construction Industry before 1 August 1983;
 - 47.5.2 is not entitled to take Long Service Leave;
 - 47.5.3 is not entitled to receive a Long Service Leave Benefit in respect of that Continuous Service; and
 - 47.5.4 the Employer is not liable to make any payment in lieu of Long Service Leave.

48. Reimbursement for payments in respect of Long Service Leave

48.1 Employer's entitlement to reimbursement from the Fund

- 48.1.1 An Employer is entitled to be reimbursed from the Fund when it has provided evidence to the Trustee that:
 - (a) the Employer has made a payment to a Worker on or after 1 January 1974, where:

- (i) the payment is made in respect of Long Service Leave or in lieu of such leave to which a Worker has become entitled in accordance with these Rules on or after 1 January 1974; and
 - (ii) the Worker was entitled to be paid a Long Service Leave Benefit or a Payment In Lieu in accordance with these Rules; or
- (b) the Employer has made a payment to a Worker in respect of Long Service Leave or made a payment in lieu of such leave, where:
- (i) the Worker was entitled to the payment otherwise than in accordance with these Rules; and
 - (ii) the Employer who makes the payment or any other person employing the Worker during the period of employment giving rise to the entitlement has paid Long Service Leave Charges to the Trustee in accordance with these Rules in respect of any part of the period of employment giving rise to the entitlement; or
- (c) the Employer has made a payment to a Worker in respect of Long Service Leave or in lieu of such leave where the payment or part of the payment:
- (i) was for Building Trades Work carried out by the Worker;
 - (ii) was made pursuant to an entitlement arising other than under these Rules; and
 - (iii) occurred after 21 December 1973 and before 1 February 1977.

48.2 Exceptions to Employer's entitlement to reimbursement from the Fund

48.2.1 The Trustee is not required to make a reimbursement in accordance with Rule 48.1.1(b) unless:

- (a) the Worker has:
 - (i) served the minimum period of Continuous Service in the Construction Industry required for a Long Service Leave Benefit to be paid in accordance with these Rules; or
 - (ii) served a minimum period of 7 years' continuous employment with a single employer and qualifies for Long Service Leave in accordance with the *Long Service Leave Act 1992* (Vic);
- (b) the Employer has paid to the Trustee any amount owing to the Trustee by the Employer under the Act, these Rules or otherwise at law; and
- (c) the Employer makes written application to the Trustee for that reimbursement within 7 years of the making of the payment for which reimbursement is sought.

48.2.2 Notwithstanding Rule 48.1.1(c), an Employer is not entitled to be reimbursed from the Fund by the Trustee for any payment made by the Employer in respect of Long Service Leave to which a Worker became entitled:

- (a) in respect of Service before 1 April 1978, where the provisions of the *Australian Workers' Union Construction and Maintenance Award* or of a determination of a Wages Trustee or the Industrial Appeals Court in relation

to tar and bitumen, wharves and jetties, excavation or roadwork or sewer builders applied to that service before that date; or

- (b) for Shopfitting Services carried out before 1 March 1982 where the provisions of the *Carpenters and Joiners (Long Service Leave) Award* applied to that employment before that date.

48.2.3 Notwithstanding anything to the contrary in these Rules, an Employer is not entitled to be reimbursed from the Trustee where it made a payment in respect of Long Service Leave to a person:

- (a) before 1 August 1983; and
- (b) the payment was made in advance of the accrual of the person's entitlement to that payment,

whether or not that person subsequently completes such Service in the Construction Industry as would have entitled the Worker to that leave or payment at a later date.

48.3 Calculation of reimbursement

48.3.1 Where the Trustee must reimburse an Employer in accordance with Rule 48.1.1(a), the amount to be reimbursed by the Trustee to the Employer is the total amount of the payment by the Employer to the Worker, capped at the amount the Trustee would have paid to the Worker if the payment had been made by the Trustee directly to the Worker under these Rules.

48.3.2 Where the Trustee must reimburse an Employer in accordance with Rule 48.1.1(b), the amount to be reimbursed by the Trustee to the Employer is calculated on the basis of the following formula:

$$R = \frac{C}{E} \times L \times OP \times \frac{365}{260}$$

Where:

- R = the amount of reimbursement;
- C = the number of days of Continuous Service recorded by the Trustee for the Worker with the Employer for the period in respect of which the Employer made the payment for Long Service Leave or made a payment in lieu of such leave;
- E = the total number of days in the period in respect of which the Employer made the payment for Long Service Leave or made a payment in lieu of such leave;
- L = the number of weeks of Long Service Leave payment or payment in lieu thereof paid to the Worker by the Employer; and
- OP = the Ordinary Pay of the Worker, calculated as at the last week that the Worker carried out Construction Work for the Employer.

48.3.3 Where the Trustee must reimburse an Employer in accordance with Rule 48.1.1(c), the amount to be reimbursed by the Trustee to the Employer is:

- (a) where all of the payment made by the Employer to the Worker relates to Building Trades Work, the total amount of the payment by the Employer to the Worker; or
- (b) where only part of the payment made by the Employer to the Worker relates to Building Trades Work:

- (i) either that proportion of the payment by the Employer to the Worker that relates to Building Trades Work; or
 - (ii) where it appears to the Trustee that the payment made by the Employer to the Worker was calculated in whole or in part by reference to work attracting higher remuneration than the Building Trades Work, the Trustee may calculate the value of the proportion of the payment that is related to Building Trades Work on the basis of such lesser amount as is determined by the Trustee for the purposes of this Rule.
- 48.3.4 Notwithstanding anything in Rule 48.3.2 or Rule 48.3.3, the amount reimbursed to the Employer in accordance with those Rules will not be greater than the total that would be payable on the basis of the most recent rate of pay for the Construction Work carried out by the Worker for the amount of Continuous Service recorded under the Rules for the Worker.
- 48.3.5 In calculating the amount to which an Employer is entitled to be reimbursed in accordance with Rules 48.3.1, 48.3.2 or 48.3.3, the Trustee may, in its discretion, index the amount to be reimbursed to the Employer, to account for:
- (a) any gap between the date on which the Worker last carried out Construction Work and the date on which the Employer made the payment to the Worker; or
 - (b) inflation (if any) during the period between the date on which the Employer made the payment to the Worker and the date on which the Employer applied in writing to the Trustee for reimbursement.

49. Overpayments

- 49.1 Where the Trustee considers that Long Service Leave Charges have been overpaid, it may, within 7 years of the date of overpayment, refund the amount of the overpayment to the person who made the payment.
- 49.2 Where the Trustee considers that a Long Service Leave Benefit paid to a Worker or to a Working Sub-Contractor has been overpaid, it may, within 7 years after the date of the overpayment, require that the person to whom the overpayment was made repay to the Trustee the amount of the overpayment.
- 49.3 Any moneys received by the Trustee in accordance with Rule 49.2 must be paid by the Trustee into the Fund.

50. Reciprocal Arrangements

- 50.1 The Minister may, from time to time, notify the Trustee that the Minister has made a Reciprocal Arrangement with a minister responsible for the administration of a Corresponding Law.
- 50.2 A Reciprocal Arrangement may relate to:
- 50.2.1 the entitlement to and payment of Long Service Leave Benefits;
 - 50.2.2 the exchange of information between the Trustee and any Equivalent Authority regarding matters relevant to entitlements and payments; and

- 50.2.3 any other related matters, where necessary or convenient.
- 50.3 The Trustee must pay an amount to an Equivalent Authority where:
- 50.3.1 the Minister has entered into a Reciprocal Arrangement in relation to a Corresponding Law which the Equivalent Authority administers;
- 50.3.2 a person has been paid a Long Service Leave Benefit (or its equivalent) by the Equivalent Authority; and
- 50.3.3 the payment made by the Equivalent Authority is either wholly or partly in respect of a period of Service in in Victoria.
- 50.4 The amount payable by the Trustee in accordance with Rule 50.3 is that proportion of the payment made by the Equivalent Authority as relates to the person's Service in Victoria.
- 50.5 Any payment by the Trustee in accordance with Rule 50.3 is subject to any terms and conditions specified in the Reciprocal Arrangement.
- 50.6 The Trustee may receive an amount from an Equivalent Authority where:
- 50.6.1 the Minister has entered into a Reciprocal Arrangement in relation to a Corresponding Law, which the Equivalent Authority administers;
- 50.6.2 the Trustee has paid a Long Service Leave Benefit to a person; and
- 50.6.3 the payment made by the Trustee is either wholly or partly in respect of a period of Service in a place where there is a Corresponding Law that is administered by the Equivalent Authority.
- 50.7 Where a Reciprocal Arrangement has been made, these Rules are to be construed as applying with any modifications that are necessary, from time to time, to give effect to the terms of the Reciprocal Arrangement.
- 50.8 The Trustee must comply with all directions given by the Minister, from time to time, relating to Reciprocal Arrangements.

Part 10 – Employers’ obligations to keep records

51. Employer required to keep certain records

An Employer must, in relation to every Worker employed by the Employer to perform Construction Work, keep a record of:

- 51.1 the Worker’s name, address, date of birth and Registration Number (if any);
- 51.2 the number of working days for which the Worker was engaged in Construction Work;
- 51.3 the period of any absence or interruption of a kind mentioned in Rules 31.2.4 and 31.2.5;
- 51.4 the Worker’s Terms of Employment;
- 51.5 the date of the Worker’s commencement and termination of employment;
- 51.6 the total amount of remuneration it has paid to the Worker, including, but not limited to, the amount of Ordinary Pay paid by the Employer to the Worker; and
- 51.7 the amount paid in respect of annual leave not taken when the Worker’s employment was terminated.

Part 11 – Trustee’s obligations to keep records

52. Register of Employers

- 52.1 The Trustee must keep the Register of Employers.
- 52.2 The Register of Employers may be kept in any format, at the discretion of the Trustee.
- 52.3 The Trustee must enter in the Register of Employers the name of any Employer whom the Trustee reasonably believes is an Employer in the Construction Industry.
- 52.4 The Trustee may remove from the Register of Employers the name of any Employer who ceases to be an Employer in the Construction Industry.

53. Register of Working Sub-Contractors

- 53.1 The Trustee must keep the Register of Working Sub-Contractors.
- 53.2 The Register of Working Sub-Contractors may be kept in any format, at the discretion of the Trustee.
- 53.3 The Trustee must enter in the Register of Working Sub-Contractors the name of any Working Sub-Contractor whom the Trustee reasonably believes is a Working Sub-Contractor who performs Construction Work in the Construction Industry.
- 53.4 The Trustee may remove from the Register of Working Sub-Contractors the name of any Working Sub-Contractor who ceases to perform Construction Work in the Construction Industry.

54. Register of Workers

- 54.1 The Trustee must keep the Register of Workers.
- 54.2 The Register of Workers may be kept in any format, at the discretion of the Trustee.
- 54.3 The Trustee must enter in the Register of Workers the name of any Worker whom the Trustee reasonably believes is a Worker who performs Construction Work in the Construction Industry.
- 54.4 The Trustee may remove from the Register of Workers the name of any Worker who ceases to perform Construction Work in the Construction Industry.

55. Non-Voting Persons

- 55.1 A person who is an Employer, Worker or Working Sub-Contractor may apply to obtain from the Trustee a certificate declaring that person to be a Non-Voting Person, where the person:
 - 55.1.1 is a natural person;
 - 55.1.2 has applied to the Board for a certificate; and

- 55.1.3 has satisfied the Trustee that the person's conscientious beliefs do not allow that person to be a member of an association of the kind established by the Trust Deed, including, but not limited to, in accordance with these Rules; or
- 55.1.4 has provided to the Trustee a current certificate issued in accordance with section 180 of the *Fair Work (Registered Organisations) Act (Cth) 2009* in favour of that person.
- 55.2 For the purpose of this Rule, conscientious beliefs mean any conscientious beliefs held by the person, whether or not the grounds for the beliefs are or are not of a religious character and whether the beliefs are or are not part of the doctrine of any religion.
- 55.3 An application by an Employer, Worker or Working Sub-Contractor must be made in accordance with Rule 59.
- 55.4 The Trustee must not charge a fee for issuing a certificate in accordance with this Rule 55.

56. Preservation of certain entitlements, rights and obligations

The entitlements, rights and obligations of a Worker, Working Sub-Contractor and Employer accorded by these Rules are not affected by that person becoming, or ceasing to be, a Non-Voting Person.

57. Ceasing to be a Non-Voting Person

- 57.1 A certificate issued in accordance with Rule 55 to the effect that a person is a Non-Voting Person is valid from the date of issue by the Trustee for such period (if any) as designated by the Trustee.
- 57.2 The Trustee may revoke a certificate issued in accordance with Rule 55 where:
- 57.2.1 the Trustee becomes aware of a matter that was not known to the Trustee when a certificate was issued to a person in accordance with Rule 55; and
- 57.2.2 if the Trustee had been aware of the matter when the application for the certificate was being considered, the Trustee would not have issued the certificate,
- subject to the Trustee:
- 57.2.3 first giving the person an opportunity to show cause why the certificate should not be revoked; and
- 57.2.4 otherwise acting in accordance with Rule 60.

58. Register of Non-Voting Persons

- 58.1 The Trustee must keep the Register of Non-Voting Persons.
- 58.2 The Register of Non-Voting Persons may be kept in any format, at the discretion of the Trustee.
- 58.3 The Register of Non-Voting Persons may be kept either separately to, or as sub-registers of, the Register of Employers, Register of Workers and the Register of Working Sub-Contractors.

- 58.4 The Trustee must enter in the Register of Non-Voting Persons the name of every Employer, Worker and Working Sub-Contractor to whom the Trustee has issued a certificate to the effect that such person is a Non-Voting Person.
- 58.5 The Trustee may remove from the Register of Non-Voting Persons the name of any Employer, Worker or Working Sub-Contractor who ceases to be a Non-Voting Person.

Part 12 – Determinations

59. Preliminary determinations

59.1 Application to CEO for preliminary determination

A Worker, Working Sub-Contractor or Employer, or a person acting on behalf of a Worker, Working Sub-Contractor or Employer may apply to the CEO or any person acting in that position, for a preliminary determination:

- 59.1.1 that any specified work is or is not Construction Work;
- 59.1.2 that any Construction Work is Building Trades Work, Electrical Trades Work or Metal Trades Work or Other Trades Work;
- 59.1.3 that a person is or is not an Employer engaged in the Construction Industry;
- 59.1.4 that a person is or is not a Working Sub-Contractor engaged in the Construction Industry;
- 59.1.5 that a person is or is not a Worker employed in the Construction Industry;
- 59.1.6 that a person is or is not in accordance with Rule 55 to be certified as a Non-Voting Person; or
- 59.1.7 concerning a person's obligations or entitlements in accordance with these Rules (including, but not limited to, obligations or entitlements in accordance with these Rules arising by virtue of the Act).

59.2 Form of application

An application for a preliminary determination in accordance with Rule 59.1 must be:

- 59.2.1 made in the form of Form 1 in Schedule 1 to these Rules, or in such other form as may be approved by the Trustee (by Ordinary Resolution of its Directors) for the purpose of this Rule 59.2.1; and
- 59.2.2 accompanied by any supporting Documents that the person making the application seeks to have taken into account in making the preliminary determination.

59.3 CEO to make preliminary determination

- 59.3.1 The CEO may make a preliminary determination in response to an application made in accordance with Rule 59.2.
- 59.3.2 In making a preliminary determination in accordance with Rule 59.3.1, the CEO:
 - (a) must take into account all relevant information contained in the application and all relevant supporting Documents accompanying the application;
 - (b) is not required to hear oral submissions in relation to the application, but may do so at the CEO's discretion; and
 - (c) may take into account any other relevant matter.

- 59.3.3 The CEO must notify the applicant in writing of the preliminary determination within 7 days after it is made.

60. Determinations of Trustee

60.1 Review of preliminary determination

A person who has applied for and received a preliminary determination in accordance with Rule 59 may apply to the Trustee for a review of that preliminary determination.

60.2 Form of review application

An review application in accordance with Rule 60.1 must be made:

- 60.2.1 in writing (including, but not limited to, by letter) addressed to the Trustee; and
- 60.2.2 within 14 days of the date on which the preliminary determination was made.

60.3 Trustee to consider application

The Trustee must consider a review application made in accordance with Rule 60.2 and make a determination either confirming or varying the CEO's preliminary determination (either wholly or in part).

60.4 Submissions to Trustee

In making a determination in accordance with Rule 60.3, the Trustee:

- 60.4.1 must take into account all Documents, information and written submissions that constituted the application made in accordance with Rule 59.1;
- 60.4.2 must give the applicant a reasonable opportunity to make any further written submissions in relation to the review and must take into account those submissions;
- 60.4.3 may, in its sole and absolute discretion, give the applicant a reasonable opportunity to make oral submissions in relation to the review application and must take into account any such submissions; and
- 60.4.4 may take into account any other relevant matter.

60.5 Meaning of 'reasonable opportunity'

For the purpose of Rules 60.4.2 and 60.4.3, the Trustee will have given the applicant a reasonable opportunity to make written or oral submissions if the Trustee:

- 60.5.1 gives the applicant a written notice acknowledging the Trustee's receipt of the review application;
- 60.5.2 invites the applicant to make any further written submissions within 14 days of the date of the written notice; and
- 60.5.3 if the Trustee decides to consider oral submissions, invites the applicant to make any oral submissions and gives the applicant 14 days' notice of the date on which the Trustee proposes to hear those submissions.

60.6 Delegation to Directors' committee

The Trustee may delegate the task of considering any material, including, but not limited to, any submissions submitted by the applicant to a Directors' committee (established in accordance with Article 35 of the Articles of Association of the Trustee) and, if the Trustee so delegates:

- 60.6.1 the Director's committee must consider the material and make a recommendation to the Trustee as to whether it should confirm or vary the CEO's preliminary determination (either wholly or in part); and
- 60.6.2 the Trustee is not required to comply with Rule 60.4.2, 60.4.3 or 60.4.4, but must take the Directors' committee's recommendation into account in deciding whether to confirm or vary the CEO's preliminary determination.

61. Arbitration in accordance with Act

Nothing in Rules 59 or 60 affects the operation of section 12 of the Act.

Schedule 1

Form 1

To: The Chief Executive Officer of CoINVEST Limited

I _____ of _____
(Name) (Address)

apply in accordance with Rule 59 of the Construction Industry Long Service Leave Rules for a preliminary determination that the following work:

- * is/is not Construction Work
- * is/is not Building Trades Work
- * is/is not Metal Trades Work
- * is/is not Electrical Trades Work

* Strike out whichever is inapplicable.

My present status is that of:

- * Worker
- * Working Sub-Contractor
- * Employer
- * person acting on behalf of one of the above

* Strike out whichever is inapplicable.

I am

- * a Non-Voting Person
- * not a Non-Voting Person
- * eligible to be, and wish to become a Non-Voting Person

* Strike out whichever is inapplicable.

The following information is provided about the application (the following details must be included):

1. Description of type of work engaged in by *Employer/Working Sub-Contractor about which this application is made;
2. Description of the machinery or equipment used in the work;
3. Period for which this application is made;
4. Award in accordance with which the Worker is paid (if any);
5. Description of duties of Worker;

6. Address for service of notices;
7. If an Employer application, names and addresses of Workers; and
8. Description of places at which work is performed.

The grounds upon which a decision is sought are:

Additional information in support of the application (if any);

Signature of Applicant Date / /

Appendix A – Building Trades Work

SCOPE OF BUILDING TRADES WORK

Work falls within the scope of Building Trades Work if it falls within any one or more of the clauses numbered 1 to 16 below.

1. Scope 1
 - 1.1 Work in or in connection with the construction, repair, maintenance or demolition of:
 - 1.1.1 civil and/or mechanical engineering projects, including, but not limited to, laying gas mains;
 - 1.1.2 power transmission, light, television, radio, communication, radar, navigation, observation towers or structures;
 - 1.1.3 power houses, chemical plants, hydrocarbons and/or oil treatment plants or refineries;
 - 1.1.4 silos;
 - 1.1.5 sports and/or entertainment complexes;
 - 1.1.6 car parks excepting car park buildings and car parks within the alignment of a building; and/or
 - 1.1.7 railways, tramways, roads, freeways, causeways, aerodromes, drains, dams, weirs, bridges, overpasses, underpasses, channels, waterworks, pipe tracks, tunnels, water and sewerage works, conduits, and all concrete work and incidental preparation work.
 - 1.2 In clause 1.1.1, 'laying gas mains' includes, but is not limited to, the following:
 - 1.2.1 laying reticulation means, namely pipes which take gas from regulator pits fed by transmission mains to different sections of roads or reserves from which gas may be required to be taken or supplied to consumers;
 - 1.2.2 testing reticulation mains after laying;
 - 1.2.3 activities concerning existing pipes carrying gas supplies; or
 - 1.2.4 laying pipes or sub-mains to take gas from reticulation mains for supply to consumers.
 - 1.3 Clauses 1.1 and 1.2 apply only to Workers or Working Sub-Contractors performing the work classified under the following classification groups set out in this Appendix:
 - 1.3.1 Labouring / Trades Assistants;
 - 1.3.2 Plant Operators;
 - 1.3.3 Mobile Crane Operators;

- 1.3.4 Carters and Drivers; and
- 1.3.5 Trades Work, but only Plumbers performing work in or in connection with laying gas mains as described in this clause.

2. Scope 2

2.1 Work in or in connection with the:

- 2.1.1 construction;
- 2.1.2 erection;
- 2.1.3 repair;
- 2.1.4 renovation;
- 2.1.5 maintenance (only by persons engaged by building and construction industry Employers);
- 2.1.6 ornamentation; and/or
- 2.1.7 demolition (including, but not limited to, removal),

of buildings (including, but not limited to, silos of all kinds, granaries and grain or grain product storage depots) or structures.

2.2 Work falling within clause 2.1 includes, but is not limited to:

- 2.2.1 assisting any bricklayer, mason, plasterer, carpenter, plumber or any tradesperson engaged in or on building operations;
- 2.2.2 any making or contracting job in wood, stone, brick, concrete (including, but not limited to, pre-casting concrete panels, lintels and beams for use in buildings and other works where the pre-casting occurs on-site or away from the site on which those buildings or works are being constructed), iron or steel or combination of those or other materials incidental to building construction;
- 2.2.3 assisting tradespersons on building sites in placing pre-stressed or pre-cast concrete components or in placing curtain walling or in work in connection with the lift slab method of erection and any labourer on building sites dismantling steel formwork or its supports;
- 2.2.4 excavating ground for foundations and basements of buildings or levelling ground on the site of and within the alignment of the actual building to be erected or doing concrete work, tar paving, or asphalt work or mortar or concrete mixing in connection with or incidental to the excavations or ground levelling;
- 2.2.5 making, assembling or fixing woodwork and fittings in connection with the work in clauses 2.1.1 to 2.1.7;
- 2.2.6 making, preparing, assembling and/or fixing any material necessitating the use of tradesperson's tools or machines;
- 2.2.7 prefabricating a building in an open yard; and/or

- 2.2.8 constructing or repairing wharves, jetties, piers or bridges.
- 2.3 Clauses 2.1 and 2.2 apply only to Workers or Working Sub-Contractors performing the work classified under the following classification groups in this Appendix:
 - 2.3.1 Labouring / Trades Assistants;
 - 2.3.2 Mobile Crane Operators;
 - 2.3.3 Carters and Drivers; and
 - 2.3.4 Trades Work.
- 3. Scope 3

Construction, maintenance, alteration, repair or demolition work carried out only by Workers or Working Sub-Contractors performing work classified under the Plant Operator classification group in this Appendix.
- 4. Scope 4
 - 4.1 Work on site or in connection with the:
 - 4.1.1 construction;
 - 4.1.2 erection;
 - 4.1.3 repair;
 - 4.1.4 renovation;
 - 4.1.5 maintenance (only by persons engaged by building and construction industry Employers);
 - 4.1.6 ornamentation; and/or
 - 4.1.7 demolition,

of buildings or structures.
 - 4.2 Work falling within clause 4.1 includes, but is not limited to:
 - 4.2.1 the prefabrication of work performed in plumbing workshops;
 - 4.2.2 plumbing, gasfitting, pipe fitting, or domestic engineering work, whether prefabricated or not; and/or
 - 4.2.3 work in or in connection with:
 - (a) sheet lead, galvanised iron or other classes of sheet metal or any other materials which supersede the materials usually fixed by plumbers;
 - (b) lead, wrought, cast or sheet iron, copper, brass or other classes of pipework;
 - (c) water (hot or cold), steam, gas, air, vacuum, heating or ventilating appliances, fittings, services or installations; or

(d) house, sanitary, chemical or general plumbing or drainage.

4.3 Clauses 4.1 and 4.2 apply only to Workers or Working Sub-Contractors performing work classified as Plumber or Plumber's labourer.

5. Scope 5

5.1 Work in or in connection with:

5.1.1 preparing;

5.1.2 erecting;

5.1.3 fitting;

5.1.4 fixing;

5.1.5 altering;

5.1.6 overhauling; or

5.1.7 repairing,

apparatus, pipes and/or fittings in and/or outside buildings or other structures for extinguishing fire by automatic sprinklers and/or other fire protection systems.

5.2 Clause 5.1 applies only to Workers or Working Sub-Contractors performing work classified as sprinkler fitter or sprinkler fitter's assistant.

6. Scope 6

Preparing, decorating or assembling joinery or building components in timber or other recognised building and/or joinery material in a shop, factory or yard that is off-site.

7. Scope 7

Concrete Testing Services as defined in Rule 1 of the Rules.

8. Scope 8

Construction Yardmen Services as defined in Rule 1 of the Rules.

9. Scope 9

Floor Covering Services as defined in Rule 1 of the Rules.

10. Scope 10

Landscape Gardening Services as defined in Rule 1 of the Rules.

11. Scope 11

Non-Destructive Testing Services as defined in Rule 1 of the Rules.

12. Scope 12

Parquetry Floor Laying Services as defined in Rule 1 of the Rules.

13. Scope 13

Shopfitting Services as defined in Rule 1 of the Rules performed by Workers or Working Sub-Contractors performing work classified as Carpenters and/or Joiners or Carpenters' Assistants.

14. Scope 14

Watering System Services as defined in Rule 1 of the Rules.

15. Scope 15

The installation of termite, bird or other pest barriers or management systems in new or existing buildings or structures (but excluding the use of fumigants) where this work is performed by a Worker or a Working Sub-Contractor in conjunction with any other Building Trades Work for the same Employer, but does not include work performed by a Worker or a Working Sub-Contractor for an employer in the pest control industry.

16. Scope 16

16.1 The installation of geomembranes, geotextiles and appurtenances where this work is performed by a Worker or a Working Sub-Contractor in conjunction with any other Building Trades Work for the same Employer, but does not include work performed by a Worker or a Working Sub-Contractor for an employer in the geomembrane or geotextile industry.

16.2 For the purposes of this clause 16:

16.2.1 'geomembrane' means an impermeable membrane liner or barrier which:

- (a) is usually (but not exclusively) made of synthetic polymers, elastomers (rubbers) or plastomers (plastics); and
- (b) may be reinforced with a fabric or be a composite of natural and synthetic materials; and
- (c) is sprayed on a surface (including, but not limited to, earth and concrete) or onto a geotextile, or is prefabricated and transported to the construction site.

16.2.2 'geotextile' means:

- (a) any permeable textile material used with foundation, soil, rock or earth, or any other geotechnical engineering-related material; and
- (b) which is an integral part of a human-made project, structure or system, especially when used in conjunction with geomembranes,

and includes, but is not limited to:

- (c) knitted, woven, and unwoven fabrics; or
- (d) products that have been developed for use in combination with, or in place of, geotextiles such as webs, mats, nets, grids and formed plastic sheets; and

16.2.3 'appurtenances' means any structure which is joined to or forms an integral part of a geomembrane installation, including, but not limited to:

- (a) concrete and/or steel weirs;
- (b) pipe collars and the like;
- (c) concrete and rock walls within the area of the geomembrane;
- (d) earth, stone and/or concrete covering over the geomembrane;
- (e) waterfalls, fountains and the like; and
- (f) pipework, pumps, valves and filters when these are specific to a geomembrane.

Work Not Within the Scope of Building Trades Work

17. Despite clauses 1 to 16 above, the scope of Building Trades Work does not include:
- 17.1 any work in stonemasonry yards, stonemasonry shops or in cemeteries; or
 - 17.2 work performed by a Worker or Working Sub-Contractor in the following classifications:
 - 17.2.1 machinist (woodworking);
 - 17.2.2 saw doctor;
 - 17.2.3 sawmakers;
 - 17.2.4 saw sharpener;
 - 17.2.5 sawyer; and related classifications; or
 - 17.3 all work performed by glaziers, being persons engaged in glazing, glass cutting, glass processing, cutting and fixing vitrolite or like material, fixing glass by any means in any place prepared for its reception, fitting and fixing glazing bars, leadlight and metal glazing including, but not limited to, cutting glass, assembling and fixing such glass using lead and/or metal sections.

CLASSIFICATIONS

Labourer / Trades Assistants

- 1. Aluminium alloy structural erectors (whether prefabricated or otherwise).
- 2. Assembler, being a person who in the manufacturing of any building sections or components is:
 - 2.1 wholly engaged in assembling prepared pieces of timber or other material (which is dressed, morticed, tenoned or otherwise prepared by machining) by cramping, nailing screwing, glueing or fastening in any way;
 - 2.2 not responsible for the dimensions of the article other than by checking with gauges or other measuring instruments, but may be required to trim, dress and/or sand such prepared articles (excluding fitting joints) in accordance with instructions given by a tradesperson; or

- 2.3 engaged exclusively on repetitive preparation or assembly of building components on any automatic, semi-automatic or pre-set single purpose machine and whose work may include, but is not limited to:
- 2.3.1 the repetitive assembling of component parts of any article in pre-determined positions in which no fitting or adjustment is required; and/or
 - 2.3.2 the attachment of accessories, such as window fasteners, casement stays or balances to articles in pre-determined prepared positions, provided that no such person shall be responsible for the setting up of machines or the dimensions of the products.
3. Assistant rigger, being a person assisting a rigger in erecting or placing in position the members of any type of structure (other than scaffolding and aluminium alloy structures) and ensuring the stability of such members, dismantling such structure or setting up cranes or hoists other than those attached to scaffolding.
 4. Bar bending machine operator / bar bender.
 5. Bitumen worker, being a person heating, preparing, cutting, carrying, laying, using on woodwork or handling asphalt, bitumen, tar or emulsion or material coated with any of those materials.
 6. Bitumen sprayer.
 7. Bitumen sprayer (driver).
 8. Builder's labourer.
 9. Carpenter's assistant.
 10. Chainperson.
 11. Concrete batching plant operator (onsite only).
 12. Concrete cutting or drilling machine operator.
 13. Concrete finisher, being a person, other than a concrete floater, engaged in the hand finishing of concrete or cement work not being a finish in marble, mosaic or terrazzo.
 14. Concrete floater, being a person engaged in concrete or cement work and using a wooden or rubber screeder or mechanical trowel or a wooden float or engaged in bagging off or broom finishing or patching.
 15. Concrete formwork stripper.
 16. Concrete gang worker.
 17. Concrete gun or pump operator.
 18. Concrete paver.
 19. Concrete screeder.
 20. Construction yardperson.
 21. Crane chaser.

22. Crane hand or gantry hand.
23. Dogger or crane hand.
24. Drainer.
25. Demolition labourer.
26. Fencer.
27. Foundation shaftsperson, being a builder's labourer engaged on sinking shafts, which will exceed 6 metres in depth for building foundations or on consequential steel fixing, timbering and concreting.
28. Floorlayer specialist.
29. Floor sander and/or sealer.
30. Gear hand.
31. Jackhammerman.
32. Lagger.
33. Kerb and gutter layer.
34. Manhole builder.
35. Power driven portable saw operator.
36. Paver (including, but not limited to, a paver of segmental paving).
37. Pipe layer (any kind of pipes).
38. Pick or shovelman.
39. Pitcher or beacher, being a person pitching or beaching on embankment or floor with stone or riprap.
40. Powder monkey, including, but not limited to, assistant powder monkey (onsite).
41. Prefab setter, being a person computing or estimating quantities or setting out material or rods from a plan, or setting up guides, jigs or machinery for fixing hardware or for the repetitive production of building modules, sections or components.
42. Renderer in pipes, tunnels or covered drains, being a person who applies by hand a continuous coat of cement mortar to a brick, masonry or set concrete surface and finishes it to a true and smooth surface by means of a trowel or float.
43. Rigger.
44. Roadmarker operator, being a person who:
 - 44.1 operates or assists in the operation of, and/or maintains the material supply to and the cleanliness of any or all of the following:
 - 44.1.1 a linemarking or roadmarking machine;

- 44.1.2 a machine which prepares road marking materials or raised pavement markers for application to the road surface; or
- 44.1.3 a machine which removes markings from the road surface;
- 44.2 places or assists in the placing of markings on the road with the aid of a machine by any other means; or
- 44.3 drives a motor vehicle in connection with any of the above operations.
- 45. Roof layer (malthoid or similar material).
- 46. Scaffolder, being a person engaged in the work of erecting or altering or dismantling scaffolding of all types.
- 47. Sewer maintenance worker, being a person engaged in the construction and/or maintenance of public sewerage mains.
- 48. Shaft or trench sinker.
- 49. Spotter.
- 50. Sprinkler fitter's assistant.
- 51. Steel erector.
- 52. Steel fixer.
- 53. Steel or bar bender to pattern or plan.
- 54. Tackle hand.
- 55. Tack welder.
- 56. Tradespersons's labourer to any tradesperson engaged in or on building operations (including but not limited to, a bricklayer, carpenter, plasterer, plumber, refractory bricklayer, stonemason (excluding assistant in factory) or terrazzo tradesperson).
- 57. Tool sharpener, being a person who sharpens and repairs any tools or drills which are heated to be sharpened.
- 58. Traffic controller (including, but not limited to, an attenuated driver).
- 59. Timberperson, being a person timbering excavations, shafts, etc.
- 60. Tunneller, being:
 - 60.1 an experienced tunneller who is engaged underground in the work of drilling, charging, firing, operating mucking trucks, timbering, placing steel supports, rock bolting, concrete vibrator hand, concrete gun operator or tending concrete chutes and conveyor belts; or
 - 60.2 a person engaged underground in assisting an experienced tunneller, car spotter, brakeperson, operators of rotary car dumps, members of a bull gang or a person carrying out any other general excavation operations.
- 61. Underpinner.

- 62. Wall builder, being a person cutting and facing stone and placing stone in position and who is responsible for line and direction.
- 63. Water maintenance worker, being a person, except where otherwise classified, wholly engaged in the construction and/or maintenance of public water mains.
- 64. Winding and haulage driver.

Plant Operators

- 65. Bitumen sprayer.
- 66. Bitumen sprayer (driver).
- 67. Electric motor attendant.
- 68. Hoist or winch driver.
- 69. Machine operator.
- 70. Second driver, navy and dragline or dredge type excavator.
- 71. Serviceperson.
- 72. Operator of one of more of the following plant:
 - 72.1 air compressor;
 - 72.2 compactor;
 - 72.3 concrete finisher, powered;
 - 72.4 concrete paver;
 - 72.5 concrete spreader, powered;
 - 72.6 crawler loader;
 - 72.7 crawler tractor with power operated attachments;
 - 72.8 dragline/shovel/excavator;
 - 72.9 drilling machine;
 - 72.10 dumper;
 - 72.11 dumper, rear and bottom;
 - 72.12 excavator, including, but not limited to, hydraulic telescopic boom type;
 - 72.13 explosive powered tools;
 - 72.14 floating crane;
 - 72.15 fork-lift;
 - 72.16 grader;

- 72.17 hand sprayer, lance type;
- 72.18 loader - front end and overhead;
- 72.19 locomotive (carrying passengers or not);
- 72.20 mobile hydraulic platform operator / driver;
- 72.21 monorail / skips;
- 72.22 motorized dump barrows;
- 72.23 pile driver;
- 72.24 pneumatic tyred loader;
- 72.25 pneumatic tyred tractor with power operated attachments;
- 72.26 road roller, including, but not limited to a road roller with vibrating scraper;
- 72.27 scraper;
- 72.28 skid steer tractor;
- 72.29 side boom/pipe layer;
- 72.30 tractor;
- 72.31 track laying, fixing or levelling machine (railway construction);
- 72.32 trenching machine;
- 72.33 trenching machine and bucket wheel trencher;
- 72.34 tunnel boring machine;
- 72.35 tunnel excavating machine; or
- 72.36 vibrators for packing concrete.

Mobile Crane Operators

- 73. Mobile crane operator / driver.
- 74. Tower crane driver.

Carters and Drivers

- 75. Truck driver / operator (where the driver/operator loads and unloads onsite).
- 76. Driver / operator of truck loading crane, being a crane which is mounted on a truck or trailer and which is used for the purpose of loading or unloading loads from the truck or trailer on which the crane is mounted (where the driver/operator loads and unloads onsite).

Landscaping Work

77. Landscaper.

Scientific and Technical Work

78. Tester, being a person who performs technical work of a minor nature including, but not limited to:

78.1 collection and physical preparation of samples including, but not limited to, finished products, production samples, waste processed and raw materials; or

78.2 simple routine repetitive testing, including, but not limited to, hardness and fatigue tests, melting point determinations, P.H readings and/or tests of a fail/pass type; or

78.3 general cleaning duties associated with laboratory work.

79. Technical assistant.

80. Technician.

81. Technical officer.

Trades Work

82. Artificial stoneworker.

83. Bricklayer, being a person engaged on bricklaying or tuckpointing work, including, but not limited to, refractory bricklaying. The work of a bricklayer may include, but is not limited to:

83.1 bricklaying;

83.2 cleaning down brickwork;

83.3 brickcutting;

83.4 tiling;

83.5 setting pointed brickwork;

83.6 firework;

83.7 setting coke slabs or coke bricks;

83.8 cutting openings in brickwork;

83.9 stone setting; or

83.10 laying all types of blocks including, but not limited to, concrete, masonry, terracotta, glass, plaster, plastic and synthetic or reconstituted material blocks or bricks, paving bricks and bricks, blocks or tiles laid in sand.

84. Bridge and wharf carpenter. The work of a bridge and wharf carpenter means the carrying out or responsibility for, marking out and measurement of all timber including the jointing, connecting and final dressing to size of hewn, sawn, round or dressed timber for checking and seating girders and corbels and other work involving final measurement, cutting accurately to size and fitting timber, with or without plans, in or in connection with the erection, maintenance, alteration or renovation or demolition of:

- 84.1 bridges, culverts, wharves, piers, jetties, dolphins and similar types of work of heavy engineering construction;
- 84.2 timber composite coal or metal storage bins and hoppers;
- 84.3 timber work on gantrys, towers, flying fox towers, swimming baths, tank stands, dam and reservoirs on which an axe or adze is used in the preparation or fitting;
- 84.4 coffer-dams apart from shipping;
- 84.5 cattle stops and rabbit stops, ramps, buffer stops, water races, pits and heavy timber work in railway platforms, trucking yards and stockyards;
- 84.6 generally all heavy construction work, which necessitates the use of an axe or adze in the preparation and fitting of such carpentry work; or
- 84.7 all falsework and concrete formwork in connection with any of the structures set out above except concrete formwork of special design or finish which requires the special skill of a carpenter and joiner,

but does not include any work in connection with the construction or erection of buildings.

85. Carpenter and/or Joiner- means a Worker employed as a carpenter and/or joiner upon Shopfitting Services or construction work as set out in scope 2 of Appendix A. The work of carpenters may include, but is not limited to:

- 85.1 work in connection with prefabricated units;
- 85.2 marking out, lining, plumbing and levelling steel formwork and supports;
- 85.3 stripping steel formwork shutters or boxing; erecting curtain walling and fixing external wall cladding;
- 85.4 erecting metal windows or doors;
- 85.5 erecting suspended ceilings including, but not limited to, the suspension thereof, provided that where ceiling finish is to be hard (wet) plaster, fibrous plaster sheets or tiles, gypsum board or other material having a plaster content, the work will not extend to such ceiling finish, or the batten, lath, track or channel to which the finish is to be attached; or
- 85.6 Shopfitting Services as defined in Rule 1 of the Rules.

86. Caster.

87. Fixer.

88. Floor finisher and/or floor coverer, being a tradesperson engaged in:

- 88.1 measuring, planning and cutting carpets on site;
- 88.2 testing (wood and concrete), sanding (rough and fine), polishing, underlaying, grinding, levelling and sealing floors; or
- 88.3 installing seamless flooring, parquetry, cork, vinyl and linoleum and laying stick down, broad loom and body carpets.

89. Irrigation installer, being a person engaged in executing any irrigation plumbing, including, but not limited to:
- 89.1 installing irrigation systems to distribute water or similar liquids from any source for purposes such as growth, leaching, cooling, misting, fogging, recycling, treating, disposal or water replenishment of the soil or other areas or substances used to sustain plant life;
 - 89.2 installing any pipes, fittings, pumps, tanks, valves, control valves, main valves or ferrules, pressure control devices, flow control devices, backflow prevention devices, filters, water meters, flow control systems, all types of hydraulic, electric and electronic extra low voltage control systems including, but not limited to, relays, timers, flow switches, level controls and other ancillary controls up to 32 volts AC and DC including, but not limited to, the associated wiring for such equipment and all other components required to form a complete system of irrigation;
 - 89.3 installing any irrigation drainage including, but not limited to, any system of channels, pipes, pits, sub-soil agricultural pipes and the like, installed for purposes such as receiving and removing water, preventing water saturation of the soil or other medium, reducing salt and chemical build-up in the soil or other medium as a result of irrigation; or
 - 89.4 associated excavation, levelling and trenching work including, but not limited to. the operation of manual or mechanical equipment as required.
90. Marble and slateworker.
91. Marker or setter out, being a person mainly engaged marking and/or setting out work for other persons.
92. Prefab tradesperson, being any tradesperson, carpenter or joiner pre-cutting or prefabricating buildings and includes, but is not limited to, persons engaged on the actual erection of the building using prepared sections or components.
93. Painter, being a person engaged in the painting and/or decorating of or in connection with all buildings and structures (including, but not limited to, prefabricated buildings or structures or parts of prefabricated buildings or structures), plant, machinery and equipment (commercial, residential, industrial or otherwise), fences and posts (commercial, residential, industrial or otherwise) and includes, but is not limited to:
- 93.1 painting pipelines, conduits, valves, condensers, cocks, control and/or regulating stations or sub-stations and/or pumping, suction syphon, or booster stations or sub-stations and/or storage holders, pressure regulating holders and/or trestles, bridges, viaducts, pylons, and any other supports, and all machinery and appurtenances relating to the foregoing on water land or sea, used or to be used for the purpose of storing and/or regulating and/or conveying liquids or gases including, but not limited to, natural oils and gases;
 - 93.2 paperhanging, applying and/or fixing wallhangings or coverings, decorating, kalsomining, distempering, plastic relief and texture work, graining, marbling, gilding, enamelling, varnishing and lacquering and replacement of glass; or
 - 93.3 mixing and/or applying and/or fixing:
 - 93.3.1 paint or like matter or substitute or mixtures or compositions or compounds;

- 93.3.2 texture or plastic coating and finishes or other decorative or protective coating and/or finishes;
- 93.3.3 putty, stopping or caulking mixtures, compositions or compounds; or
- 93.3.4 oils, varnishes, watercolours, lacquers, stains, wallpapers, wallhangings, or covering, coatings, and/or other materials used in the painting and decorating trade,
with a brush, spray, roller or other tool;
- 93.4 removing:
 - 93.4.1 paint or like matter or substitutes or mixtures or compositions or compounds for texture or coatings and finishes or other decorative coating and/or finishes;
 - 93.4.2 putty, stopping or caulking mixtures, compositions or compounds; or
 - 93.4.3 oils, varnishes, watercolours, lacquers, stains, wallpapers, wallhangings, or coverings, or other materials used in the painting and decorating trade,
by heat, flame, water solvents, electrical mechanical, air-powered or hand tools or by grit, shot or other abrasives or by any other means; or
- 93.5 preparation of the work and materials required in any of clauses 93.1, 93.2, 93.3 and/or 93.4 above.
- 94. Plasterer (excluding plaster casting).
- 95. Plumber (including, but not limited to, drainers, gasfitters, roof plumbers, lead burners, heating plumbers, air conditioning or ventilation plumbers, medical gas plumbers and irrigation installers).
- 96. Roof tiler (including but not limited to roof slater, roof shingler, ridger or roof fixer), being a person who:
 - 96.1 tiles roofs or fixes roofing sheets of asbestos, fibro, fibrolite or cement mixtures and accessories, malthoid, sisalkraft, pamcotile or bituminous roofing material and all accessories made of the same materials which include, but are not limited to, terracotta, glazed, semi-glazed roofing tiles, cement tiles, slates, fibro slates, tiles, asbestos, fibrolite, fibro, fibrous mixtures, cement and any mixtures that may replace or be used in conjunction with those materials or any incidental or replacement materials; and
 - 96.2 performs incidental work including, but not limited to, battening for tiles, trying, nailing or carrying tiles and laying and/or pointing ridges and barges.
- 97. Signwriter (onsite), being a person who (in addition to having a knowledge of painting, staining and varnishing), paints pictorial and scenic paintings, or produces signs and posters by means of stencils screens or like methods or any other incidental work including, but not limited to, cutout displays of all descriptions, pictorial scenic or lettering, and includes, but is not limited to:
 - 97.1 lettering of every description, size or shape applied by brush on any surface or material;

- 97.2 designing for windows, posters, show window and theatre displays, honour rolls, illuminated addresses, neon signs, stencils, display banners;
 - 97.3 gilding, which means the application of gold, silver, aluminium or any metal leaf to any surface;
 - 97.4 designing and laying out cutout displays of all descriptions, either pictorial, scenic or lettering;
 - 97.5 screen process work (which means designing, setting up and duplicating signs on any material); or
 - 97.6 making stencils and stenciling by screens or any other method and making and/or fixing transfers.
98. Special class tradesperson.
99. Sprinkler fitter, being a fitter who can prepare, erect, fit, fix, commission, alter, overhaul, repair or test apparatus, pipes and/or fittings including, but not limited to, fixing and connecting tanks, valves, water supplies, pumps, gauges, or alarms for systems for the detection, extinguishment and/or control of fires and/or all pipes and/or fittings for conveyance of water, air and/or gas and/or chemical compounds and/or pipes and fittings for hydrant and hose reel services.
100. Stonemasons, being any one or more of the following:
- 100.1 carver, being a person who carves any kind of stonework which does not come within the definition of Stonemason, for the decoration of buildings or other stonework from a model or freehand design;
 - 100.2 floor layer, being a person who lays floors in terrazzo or similar composition in which marble, slate or similar stones are used and includes, but is not limited to, persons casting or laying down precast work;
 - 100.3 letter cutter, being a person who marks out, cuts or finishes letters in any kind of stone or artificial or reconstituted stone;
 - 100.4 machinist, being a person who operates a machine for the sawing, gritting, dressing, facing or polishing of all kinds of stone, composition or reconstituted stone, terrazzo or similar compositions;
 - 100.5 stonemason, being a person engaged in the dressing, setting, fixing, coping, drilling or boxing up of any kind of stone, including, but not limited to, terrazzo, composition or other reconstituted stone, by hand or machine, that has to be cut to a mould or template, or which has to be proven by a square or straight edge or set to a line or level, and includes, but is not limited to, a person who fixed manufactured stone to the facade of a building or the building of stone veneer in random or ashlar; the restoration and colouration of decayed stone including, but not limited to, the preparation and use of materials or liquids of any sort necessary for such work, but does not include a monumental stonemason; or
 - 100.6 stoneworker, being a person who does any or all of the following, whether hammer dressed or sawn:
 - 100.6.1 foundation work; or

100.6.2 building random rubble uncoursed or building square rubble in course or regular coursed rubble and dressing quoins or shoddies in connection with any such work.

101. Tilelayer, being a person engaged laying or fixing tiles, faience, mosaic, ceramic, opalite, and the like.

Appendix B – Electrical Trades Work

CLASSIFICATIONS

1. Alarm / security tester, including, but not limited to, a person who is engaged to:
 - 1.1 carry out basic inspection and test procedures on electrical fire detection systems, including, but not limited to panes, local alarms, detectors, signs and/or associated ancillary equipment and engaged as such, and is able to carry out minor repairs and changes to detector circuitry, replace detectors, globes, batteries, etc. as required; and/or
 - 1.2 carry out involved test procedures and/or functional operations of all fire detection and suppression products including, but not limited to, panels, detectors, control equipment, emergency lighting, evacuation systems or systems of special application, interchange test runs and demonstrate system operations and/or prepare detailed product and field related fault reports; and/or
 - 1.3 carry out repairs and maintenance of alarm/control panels, detectors, fire suppression signs, bells and/or other ancillary associated equipment in the industry of fire alarm servicing, excluding authority provided power supplies or works on live side of isolating devices.
2. Alarm / security technician, including, but not limited to, a tradesperson engaged to:
 - 2.1 carry out repairs and/or maintenance of alarm/control panels, detectors, pumps, fire suppression signs, bells and other associated equipment in the industry of fire-alarm servicing; and/or
 - 2.2 in the industry of security servicing, engaged in the fields of intruder alarm systems, closed circuit television, video or photographic systems and/or any external or internal security lighting devices, performing repairs and maintenance; and/or
 - 2.3 be engaged on complex or intricate circuitry or both; and/or
 - 2.4 repair, maintain, service, modify, commission, fault find and/or diagnose various forms of systems which are electronically controlled by complex digital and/or analogue control systems utilising integrated circuitry and who is capable of maintaining and repairing multi-function printed circuitry using circuit diagrams and test equipment, providing technical guidance within the scope of work in this definition and/or preparing reports of a technical nature on specific tasks or assignments within the scope of the work described in this definition.
3. Appliance serviceperson.
4. Cable joiner, being a person engaged in jointing and/or terminating of approved sheathed cables associated with the installation and/or maintenance of underground mains, sub-mains and/or final sub-circuits at consumer's premises, together with the running, fixing and/or connecting of any associated earthing conductors.
5. Cable joiner's mate / assistant.
6. Electrical armature and motor winder.

7. Electrical fitter, being an electrical fitter normally engaged in making, repairing or maintaining electrical machines, instruments or appliances, but does not include electrical fitters engaged in the manufacturing section of an Employer's business.
8. Electrical mechanic.
9. Electrical mechanic's assistant, being a person directly assisting an electrical mechanic.
10. Electrical switchboard builder / assembler.
11. Electrical tradesperson.
12. Electrician special class, being an electrical fitter or electrical mechanic who is mainly engaged on complex or intricate circuitry or both, or who is mainly engaged on the site installation, testing, repair and maintenance of industrial electrical measuring, process control and/or scientific instruments and/or who is able to examine, diagnose and modify systems comprising inter-connected circuits.
13. Electronic equipment installer, including, but not limited to, a person who, under the supervision of a tradesperson or electronics serviceperson:
 - 13.1 installs radio, communications and/or related equipment including, but not limited to antennae;
 - 13.2 installs fire alarm or security alarm equipment; or
 - 13.3 installs data and communication cabling.
14. Electronic equipment tester / installer, including, but not limited to a person:
 - 14.1 engaged on the alignment, installation and/or testing of data, radio, communications and/or related equipment including, but not limited to, antennae, including, but not limited to, the locating of faults not requiring the skills of a tradesperson;
 - 14.2 who, under the supervision of a tradesperson or electronics serviceperson or not;
 - 14.2.1 installs radio, communications and/or related equipment including, but not limited to antennae;
 - 14.2.2 installs fire alarm or security alarm equipment; or
 - 14.2.3 installs, terminates and tests data and/or communication cabling; or
 - 14.3 who inspects and/or tests fire alarms or security alarm equipment.
15. Electronic serviceperson, including, but not limited to, a person engaged:
 - 15.1 on radio, communications and/or related equipment which requires the application of general trades experience gained through apprenticeship in that work; and/or
 - 15.2 on complex or intricate circuitry or both including, but not limited to, examining, diagnosing and/or modifying systems comprising inter-connected circuits; and/or
 - 15.3 to install, repair, maintain, service, modify, commission, test, fault find and/or diagnose various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue systems utilising integrated circuitry, who is capable of maintaining and repairing multi-function printed circuitry using

diagrams and test equipment, providing technical guidance on the scope of work in this definition, and/or preparing reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition; and/or

- 15.4 to maintain and/or repair multi-function printed circuitry using circuit diagrams and/or test equipment, and/or design, modify, test and/or diagnose complex electronic systems related to radio and communications equipment.
16. Electronic tradesperson, being a person who is mainly engaged in installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and/or diagnosing of various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control systems utilising integrated circuitry, who is capable of maintaining and repairing multi-function printed circuitry using diagrams and test equipment, providing technical guidance on the scope of work in this definition, preparing reports of a technical nature on specific tasks or assignments within the scope of the work described in this definition and/or investigating plant and equipment operating problems which may be solved by modifications to electronic control equipment or the application of electronic solutions and/or to design, redesign, develop, manufacture and implement electronic circuits to effect plant and/or product improvements.
17. Instrument tradesperson.
18. Instrument tradesperson – complex systems.
19. Instrumentation and controls tradesperson.
20. Instrument tradesperson special class.
21. Instrument tradesperson – advanced.
22. Labourer.
23. Lines assistant.
24. Line clearance operator, being a person who is engaged in the clearance of vegetation in the vicinity of overhead power distribution lines.
25. Linesperson tradesperson, being a person engaged on line work which requires the application of general trade experience gained through apprenticeship as an Electrical Mechanic or Linesperson.
26. Refrigeration / air-conditioning tradesperson.
27. Refrigeration mechanic or serviceperson.
28. Refrigeration / air-conditioning tradesperson – advanced.
29. Rigger.
30. Scaffolder.
31. Storeperson, being a person who is engaged in storework and/or is directly in charge of an electrical store and responsible for materials, ordering and/or purchasing.
32. Television antenna installer / erector, including, but not limited to, a person engaged in erecting and/or installing television and other electronic impulse transmitting and/or receiving antennae.

33. Television / radio / electrical equipment serviceperson, including, but not limited to, a person who:
- 33.1 is engaged on routine servicing work; and/or
 - 33.2 works on visual and/or sound receiving, recording and/or reproduction devices and/or associated equipment and/or associated electronics products; and/or
 - 33.3 is required to diagnose and/or rectify faults in electronics equipment and/or similar apparatus; and/or
 - 33.4 works in installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and/or diagnosing of various forms of machinery and/or equipment which are electronically controlled by complex digital and/or analogue systems utilising integrated circuitry, who is capable of maintaining and/or repairing multi-function printed circuitry using circuit diagrams and/or test equipment, providing technical guidance on the scope of work in this definition and/or preparing reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.
34. Trades assistant, being a person engaged in assisting a tradesperson, who may perform the following tasks:
- 34.1 unskilled tasks as directed;
 - 34.2 cutting ducting, unistrut, conduit; and other cable and support systems to specified lengths;
 - 34.3 painting cable trays, ducts and conduits;
 - 34.4 driving or operate vehicles, machinery, plant or equipment incidental to his or her primary tasks or functions;
 - 34.5 assisting a tradesperson installing cable/conduit, ducting and other cable enclosures or support systems; and/or
 - 34.6 chasing walls as marked by a tradesperson.

Appendix C – Metal Trades Work

SCOPE OF METAL TRADES WORK

Work falls within the scope of Metal Trades Work if it falls within any one or more of the paragraphs numbered 1 to 5 below, whether it is performed on site or off site.

1. Scope 1

The occupations of, and all occupations allied to, engineering, metal working and fabricating in all their branches.

2. Scope 2

2.1 The following occupations, which may be read individually or collectively in any combination:

- 2.1.1 mechanical and electrical engineering;
- 2.1.2 smithing;
- 2.1.3 boilermaking and erection and repairing;
- 2.1.4 bridge and girder construction and erection and repairing;
- 2.1.5 steel fabrication, construction and erection, and repairing;
- 2.1.6 welding;
- 2.1.7 tool, die, gauge and mould making;
- 2.1.8 sheet metal working;
- 2.1.9 metal machining;
- 2.1.10 ironworking;
- 2.1.11 iron and steel pipe making and fabrication;
- 2.1.12 window frame making and repairing;
- 2.1.13 safe and strong-room making and repairing;
- 2.1.14 the erection and installation, maintenance and repair of all forms of electrical machinery, apparatus and appliances;
- 2.1.15 radio, telephone and X-ray maintaining and repairing;
- 2.1.16 wet and dry battery repairing;
- 2.1.17 erection, installation, maintenance and repair of electrical advertising equipment including, but not limited to, neon signs;
- 2.1.18 erection, installation, maintenance and repair of fluorescent lighting;
- 2.1.19 the drawing and insulation of wire for conducting electricity;

- 2.1.20 the repair of recording, measuring and controlling devices for electricity, fluids, gases, heat, temperature, pressure, time, etc.;
- 2.1.21 galvanising;
- 2.1.22 electroplating of all types;
- 2.1.23 processing of metals such as sherardizing and bonderizing;
- 2.1.24 lift and elevator making, installation and major modernisation;
- 2.1.25 refrigerator maintenance and repair;
- 2.1.26 installation, maintenance and repair of ventilating and air-conditioning plant and equipment;
- 2.1.27 metal furniture repairing;
- 2.1.28 installation, maintenance and repair of scales and machines for measuring mass and equipment;
- 2.1.29 japanning, enamelling, painting etc. of metallic articles;
- 2.1.30 hand and machine engraving;
- 2.1.31 testing and repair of water fittings;
- 2.1.32 manufacture of any article or articles from metal wire;
- 2.1.33 installation of all classes and types of electrical wiring equipment and plant, and the repair and maintenance thereof;
- 2.1.34 generation and distribution of electric energy;
- 2.1.35 treatment, installation, maintenance, repair and reconditioning of any articles, part or components, whether of metal and/or other material in any of the foregoing industries;
- 2.1.36 sorting, packing, despatching, distribution and transport in connection with any of the occupations set out at clauses 2.1.1 to 2.1.35 of the Scope of Metal Trades Work;
- 2.1.37 installation, construction, maintenance, repair and reconditioning of plant, equipment, buildings and services (including, but not limited to, power supply) in establishments connected with the occupations described in this clause 2.1 and maintenance work generally; and/or
- 2.1.38 every operation, process, duty and function carried on or performed in or in connection with or incidental to any of the occupations set out at clauses 2.1.1 to 2.1.37 of the Scope of Metal Trades Work.

3. Scope 3

Erection of cross country high voltage transmission towers, conductors, earth wires and all incidental work.

4. Scope 4

Persons engaged in the technical field, including, but not limited to, inspection, quality control, supplier evaluation, laboratory, Non-Destructive Testing Services, technical purchasing, and design and development work (prototypes, models, specifications) in both product and process areas and like work.

5. Scope 5

Persons engaged in the mobile crane hiring industry, which is a service industry involving the supply of mobile cranes and like equipment and operating personnel to clients whose requirements include, without limitation, the provision and service of materials handling equipment, lifting and machinery movement equipment, earthmoving and construction plant hire and civil contracting, plant and mobile units for quarrying and mining projects, dig load and haul projects.

6. Scope 6

Persons engaged as plumbers by Employers whose establishments are predominantly metal trades establishments, but excluding:

6.1 plumbers whose normal work is performed away from the Employer's establishment; and

6.2 plumbers employed by an Employer whose plant is principally concerned with the erection, repair or demolition of buildings.

Work not within the scope of Metal Trades Work

Despite clauses 1 to 6 above, the scope of Metal Trades Work does not include making and/or repairing tin plate cased gas meters or to the fitting and/or repairing and/or final assembly of cast-iron gas meters.

CLASSIFICATIONS

Technical Work

1. Engineering tradesperson.
2. Engineering technician.

Air-conditioning and Refrigeration Work

3. Persons performing 'air-conditioning work', meaning the on-site fabrication and/or installation of air-conditioning and/or ventilation systems and all ancillary work, including, but not limited to, packaged air conditioning units, thermostatic controls, water recirculation equipment, air volume regulators, diffusers, fans, heat exchange equipment and the like.
4. Air-conditioning tradesperson, being a tradesperson engaged on site on the fabrication and/or installation of duct work and who in addition can fabricate and/or install such items as reducing pieces, lobster backs and other items, the fabrication and/or installation of which requires the application of general trade skill and knowledge.
5. Refrigeration mechanic or serviceperson, being a tradesperson who installs, services or repairs refrigeration plant and equipment and/or ancillary components and equipment on a construction site.

General Engineering Work

6. Assembler – window-frame making, being a person (other than a tradesperson) who makes window-frames, metal doors and grilles, and metal ornamentations used in buildings.
7. Construction technician.
8. Fitter and/or machinist.
9. Forklift driver.
10. Persons engaged as forepersons, where:
 - 10.1 the Employer employs 30 or more employees; and
 - 10.2 the foreperson is a:
 - 10.2.1 foreperson/supervisor, meaning a person, other than a leading hand, appointed as such or required by the Employer to be mainly engaged in the direct supervision of employees including, but not limited to, those employed as leading hands, performing Metal Trades Work; or
 - 10.2.2 general foreperson/supervisor, meaning a person appointed as such or required by the Employer to be mainly engaged in the direct supervision and coordination of the work of at least 2 foreperson/supervisors (defined in 10.2.1 above) but shall not include persons who are Draughtspersons, Production Planners and Technical Workers (as defined in the *Manufacturing and Associated Industries and Occupations Award 2010*), Professional Engineers (as defined in the *Professional Employees Award 2010*), Professional Scientists (as defined in the *Professional Employees Award 2010*) or site managers, departmental heads and the like.
11. Insulator, being a person who operates and controls the applicator gun used in insulation by foam application equipment.
12. Inspector, being a tradesperson who is engaged to inspect components while in production or upon completion as to their conformity with a specified standard of quality and accuracy and who is authorised to exercise and does exercise a discretion to pass components which may not conform to that standard.
13. Locksmith, being a tradesperson engaged in the making and/or repairing of locks and the mechanism of safe and strong-room doors.
14. Special class tradesperson (including, but not limited to, electrical/electronic, mechanical or fabrication).
15. Motor mechanic, being a tradesperson engaged in repairing, altering, overhauling, assembling (except for the first time in Australia) or testing metal and/or electrical parts of the engine or chassis of motor cars, motor cycles or other motor vehicles.
16. Pipe fitter on low pressure work.
17. Plant mechanic, being a tradesperson engaged in repairing and/or overhauling wheeled or tractor type mobile equipment associated with: construction equipment; earth moving equipment, or agricultural and industrial mobile equipment such as petrol and/or diesel engines, chassis transmissions, hydraulics, electrical systems and ancillary equipment.
18. Safe maker and/or repairer (security work).

19. Scale maker and/or adjuster.
20. Scientific instrument maker, being a tradesperson engaged on the work of manufacturing, repairing, adjusting and/or testing of optical and scientific instruments, but does not include a person working exclusively as a tradesperson.
21. Toolmaker, being a tradesperson making and/or repairing any precision tool, gauge, die or mould to be affixed to any machine, who designs or lays out his/her work and is responsible for its proper completion.
22. A person directly assisting a tradesperson.

Smithing Work

23. Smith.

Boilermaking and Steel Construction Work

24. Boilermaker and/or structural steel tradesperson.
25. Driller using portable or stationary machines.
26. Holder-up whether using hand or machine dolly of any kind, including, but not limited to, all incidental work.
27. Steel construction machinist.

Welding Work

28. Welder.

Foundry Work

29. Assistant furnaceperson.
30. Furnaceperson.

Electrical Work

31. Battery attendant.
32. Battery fitter, being a person wholly engaged in erecting, overhauling or repairing storage batteries.
33. Coremaker (transformers).
34. Electrical instrument maker and/or repairer, being a person engaged in an electric supply undertaking who is required to design, test, repair and build electrical measuring and/or recording appliances and/or instruments (not including consumers' meters) and carrying out experiments on same in a workshop or laboratory.
35. Installation inspector and/or tester.
36. Linesperson, being a person engaged in erecting, fixing, maintaining or repairing overhead conductors or electrical apparatus, or fixing service cut-out boxes or supportors for meters.
37. Linesperson's assistant, being a person engaged assisting a linesperson.

38. Meter tester, being a person engaged in tasks that include, but are not limited to:
 - 38.1 the testing, adjustment and replacement of standard parts of polyphase electricity meters on consumers' premises and polyphase meters in a workshop; or
 - 38.2 the testing, adjusting and replacement of standard parts of single-phase electricity meters, including, but not limited to, the testing of meters in batches in a workshop.
39. Shift electrician, being an electrician who is in charge of a generating station or rotary converter sub-station during his/her shift.
40. Refrigeration mechanic or serviceperson.

Sheet Metal Work

41. Sheet metal worker.
42. Dipper.
43. Painter and/or lacquerer.
44. Painter brush hand.

Galvanising Work

45. Galvaniser.

Ironworking and General Work

46. Belt repairer.
47. Bender of iron and steel frames used for reinforcing concrete.
48. Block and tackle hand.
49. Boiler (inside chipper and cleaner).
50. Cold saw operator.
51. Dogger and/or crane chaser.
52. Dresser, shot blast, sand blast or grinder.
53. Fork lift driver.
54. Friction saw operator.
55. Grinding machine.
56. Ironworker.
57. Lagger, being a person engaged in the mixing or fixing of lagging on the job.
58. Rigger and/or splicer.
59. Spray painter (ironwork and/or brush hand).
60. Stress reliever.

61. Vulcaniser.

Industrial Instrumentation Work

62. Industrial instrumentation worker.

Crane Work

63. Crane crewperson.

64. Dogger.

65. Dogger / rigger.

66. Driver or operator of:

66.1 lofty crane;

66.2 overhead electric crane;

66.3 mobile crane;

66.4 mobile hydraulic platform;

66.5 mobile tower crane; or

66.6 special purpose crane.

67. Rigger.

Plant Work

68. Drivers or operators of the following mechanical plant:

68.1 crawler tractor;

68.2 excavator;

68.3 forklift;

68.4 grader;

68.5 loader;

68.6 pile driving machine;

68.7 pneumatic tyred tractor; or

68.8 road roller.

69. Second driver, navy and dragline or dredge type excavator.

70. Winch driver.

Plumbing Work

71. Plumber.

