

RULES OF THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE FUND

PART I - INTERPRETATION

1 INTERPRETATION

1.1 Definitions

In these rules unless the contrary intention appears:

‘Act’ means the *Construction Industry Long Service Leave Act 1997*;

‘Associated Corporation’ has the following meaning:

A Corporation is an Associated Corporation in relation to another Corporation if:

- (a) the directors of the first-mentioned Corporation and the directors of the other Corporation are substantially the same; or
- (b) the first-mentioned Corporation and the other Corporation are under substantially the same management, and

any two or more such Corporations are deemed to be Associated Corporations notwithstanding that one of those Corporations may have ceased to exist, or the Corporations were not both in existence at any time;

‘Award’ means:

- (a) an employee agreement under the *Employee Relations Act 1992*; or
- (b) an award or agreement in force under any law of the Commonwealth relating to industrial conciliation or arbitration;

‘Board’ means the board of Directors of the Trustee;

‘Building Trade Works’ means work:

- (a) performed in the Construction Industry in Victoria, being:
 - (i) work of a kind for which a rate of pay is fixed by a Prescribed Building Award; or
 - (ii) work (whether or not a rate of pay is fixed by a Prescribed Building Award) of the kind usually performed by a person acting as a foreman, sub-foreman or leading hand in the supervision of any work of the kind referred to in sub-paragraph (i); or
- (b) performed outside Victoria which if performed in the Construction Industry in Victoria would be Building Trades Work within the meaning of paragraph (a)(i) or (a)(ii),

but does not include any work of the kind usually performed by a monumental stonemason;

‘Commencement Date’ means the date of execution of the Trust Deed;

‘Construction Industry’ means the industry:

- (a) of carrying out the construction, 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 works for the passage of persons, animals or vehicles;
 - (iii) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour or waterway for the purposes of navigation;
 - (iv) works for the storage or supply of water or for the irrigation of land;
 - (v) works for the conveyance, treatment or disposal of sewage or of effluent from any premises;
 - (vi) works for the extraction, refining, processing or treatment of materials or for the production or extraction of products and by-products from materials;
 - (vii) bridges, viaducts, aqueducts or tunnels;
 - (viii) chimney stacks, cooling towers, drilling rigs, gasholders or silos;
 - (ix) pipelines;
 - (x) navigational lights, beacons or markers;
 - (xi) works for the drainage of land;
 - (xii) works for the storage of liquids (other than water) or gases;
 - (xiii) works for the generation, supply or transmission of electric power;
 - (xiv) works for the transmission of wireless or telegraphic communications;
 - (xv) pile driving works;
 - (xvi) structures fixtures or works for the use of any buildings or works of a kind referred to in sub-paragraphs (i) to (xv); and
 - (xvii) works for the preparation of sites for any buildings or works of a kind referred to in sub-paragraphs (i) to (xvi); and
- (b) of carrying out of works on the site of the construction, erection, installation, reconstruction, re-erection, renovation, alteration or demolition of any buildings or works of a kind referred to in paragraph (a) for the fabrication, erection or installation of plant, plant facilities or equipment for those building works, but does not include:

- (c) the carrying out of any work on ships;
- (d) the maintenance of or repairs to lifts or escalators; or
- (e) the carrying out of maintenance or repairs of a routine or minor nature by Workers for an Employer who is not engaged substantially in the industry described in this definition;

‘Construction Work’ means Building Trades Work, Electrical Trades Work and Metal Trades Work;

‘Continuous Service’:

- (a) in relation to a Worker, has the meaning given in **rule 21**; and
- (b) in relation to a Working Sub-Contractor, has the meaning given in **rule 21** as modified by **rule 22**;

‘Corporation’ includes a body corporate, wherever incorporated, and any other entity which by the law under which it is formed has a separate legal personality;

‘Corresponding Law’ has the same meaning as given to ‘corresponding law’ in the Act;

‘Director’ means a director of the Trustee;

‘Effective Date’ means the day that section 19 of the Act comes into operation;

‘Electrical Trades Work’ means work:

- (a) performed in the Construction Industry in Victoria, being:
 - (i) work of a kind for which a rate of pay is fixed by a Prescribed Electrical Contracting Award; or
 - (ii) work (whether or not a rate of pay is fixed by a Prescribed Electrical Contracting Award) of the kind usually performed by a person acting as a foreman, sub-foreman or leading hand in the supervision of any work of the kind referred to in sub-paragraph (i); or
- (b) performed outside Victoria which if performed in the Construction Industry in Victoria would be Electrical Trades Work within the meaning of paragraph (a)(i) or (a)(ii);

‘Employee Relations Commission’ means the Employee Relations Commission of Victoria established under the Employee Relations Act 1992;

‘Employer’ means a person (not being the Crown in the 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;

‘Former Fund’ means the Construction Industry Long Service Leave Fund established under section 9 of the *Construction Industry Long Service Leave Act 1983* 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;

‘Long Service Leave’ means long service leave which a Worker is entitled to under these Rules by virtue of the Act;

‘Long Service Leave Benefit’ means an entitlement paid out of the Fund, in accordance with these Rules;

‘Long Service Leave Charge’ means a contribution paid into the Fund by any Employer or any Working Sub-Contractor in accordance with these Rules;

‘Metal Trades Work’ means work:

- (a) performed in the Construction Industry in Victoria, being:
 - (i) work of a kind for which a rate of pay is fixed by a Prescribed Metal Award or a Prescribed Engine Driving Award; or
 - (ii) work (whether or not a rate of pay is fixed by a Prescribed Metal Award or a Prescribed Engine Driving Award) of the kind usually performed by a person acting as a foreman, sub-foreman or leading hand in the supervision of any work of the kind referred to in sub-paragraph (i); or
- (b) performed outside Victoria which if performed in the Construction Industry in Victoria would be Metal Trades Work within the meaning of paragraph (a)(i) or (a)(ii),

but does not include any work within the meaning of paragraph (a) or (b) where that work:

- (c) is performed after the completion of the construction, erection, installation, reconstruction, re-erection, renovation, alteration or demolition of any buildings or works of a kind referred to in paragraph (a) of the definition of Construction Industry;
- (d) is performed away from the site of the construction, erection, installation, reconstruction, re-erection, renovation, alteration or demolition of any buildings

or works of a kind referred to in paragraph (a) of the definition of Construction Industry; or

- (e) is incidental to or of a minor nature in relation to the work normally performed by a Worker for an Employer who is not engaged substantially in the Construction Industry;

‘Minister’ means:

- (a) at any time prior to the Effective Date, the Minister of the Victorian Government who is allocated responsibility for the *Construction Industry Long Service Leave Act 1983*; and
- (b) as from and including the Effective Date, the Minister of the Victorian Government who is allocated responsibility for the Act;

‘Ordinary Pay’:

- (a) for the purposes of **rule 11**, has the meaning given in **rule 11.7**; and
- (b) for the purposes of Part 6 of these Rules, has the meaning given in **rule 18**;

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

‘Pay Day’, for the purposes of **rule 11**, has the meaning given in **rule 11.6**;

‘Prescribed’ means prescribed by the Board;

‘Prescribed Amount’ has the meaning given in **rule 33.2**;

‘Prescribed Building Award’ means an Award or any part or any parts thereof which is or are Prescribed as a building award for the purposes of the Fund and includes each of the following Awards:

Award or Agreement	Extent of Prescription
<i>Australian Workers’ Union Construction and Maintenance Award 1989</i>	The whole
<i>Building Construction Employees and Builders Labourers (Consolidated) Award 1982</i>	The whole
<i>Carpenters and Joiners Award 1967</i>	Division D
<i>National Building and Construction Industry Award 1990</i>	The whole except for work described in clause 38 (32)
<i>Sprinkler Pipe Fitters Award 1975</i>	The whole
<i>The Plumbing Trades (Southern States) Construction Agreement</i>	The whole

Award or Agreement**Extent of Prescription***The Prefabricated Building (Off-Site) Award 1978*

The whole

‘Prescribed Electrical Contracting Award’ means an Award or any part or any parts thereof which is or are Prescribed as an electrical contracting award for the purposes of the Fund and includes each of the following Awards:

Award or Agreement**Extent of Prescription**

Electrical Contracting Industry Award 1992

Parts A and B

‘Prescribed Engine Driving Award’ means an Award or any part or any parts thereof which is or are Prescribed as an engine driving award for the purposes of the Fund and includes each of the following Awards:

Award or Agreement**Extent of Prescription***Engine Drivers’ and Fireman’s (General) Award 1968*

Insofar as it relates to persons whose wage rates are prescribed by Part II of clause 8

Metal Industry (Engine Drivers’ and Firemen’s Award 1984

Insofar as it relates to on site Construction Work contained in Part II and Appendix A

Mobile Crane Hiring Award 1988

The whole

‘Prescribed Metal Award’ means an Award or any part or any parts thereof which is or are Prescribed as a metal award for the purposes of the Fund and includes each of the following Awards:

Award or Agreement**Extent of Prescription***Metal Industry Award 1984*

Part I and Appendix A: on site construction

National Metal and Engineering On-site Construction Industry Award 1989

The whole

Metal Trades Award 1952

Part III

Transmission Line Construction in Victoria Agreement 1981

The whole

‘Prescribed Percentage’ has the meaning given in **rule 11.2;**

‘Prescribed Period’ has the meaning given in **rule 11.11;**

‘Reciprocal Arrangement’ has the meaning given in **rule 34.2**;

‘Register of Employers’ means the register of Employers in the Construction Industry allocated to the Trustee under the Act, kept in accordance with **rule 8**;

‘Register of Workers’ means the register of Workers in the Construction Industry allocated to the Trustee under the Act, kept in accordance with **rule 10**;

‘Register of Working Sub-Contractors’ means the register of Working SubContractors performing Construction Work in the Construction Industry allocated to the Trustee under the Act, kept in accordance with **rule 9**;

‘Registration Number’ means in relation to a Worker, the registration number ascribed to him or her by the Trustee by the issue of a registration card pursuant to **rule 44**;

‘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;

‘Trust Deed’ means the trust deed between # (as ‘Settlor’) and CoINVEST Limited ACN # (as ‘Trustee’) establishing the Fund, and to which these Rules are scheduled as Schedule 2;

‘Worker’ means a person who:

- (a) is ordinarily resident in Victoria; and
- (b) performs work under a contract of employment, and includes a foreman, sub-foreman and an apprentice;

‘Working Sub-Contractor’ means:

- (a) a person who is ordinarily resident in Victoria and whether or not:
 - (i) he is an Employer; or
 - (ii) he is in partnership with another person,
 performs work for fee or reward under a contract for labour only, or substantially labour only; or
- (b) a person, not being an Employer, who:
 - (i) is ordinarily resident in Victoria; and
 - (ii) performs Electrical Trades Work or Metal Trades Work for fee or reward,

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

1.2 Interpretation

In these Rules unless the context otherwise requires:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) a reference to any legislation or statutory instrument is construed in accordance with the relevant State or Federal Acts Interpretation Act applicable to the legislation or statutory instrument;
- (c) a reference to a person includes a Corporation, firm or body of persons;
- (d) other grammatical forms of defined words or phrases have corresponding meanings;
- (e) a reference to a schedule or annexure is a reference to a schedule or annexure to these Rules and a reference to these Rules includes any schedules and annexures;
- (f) terms defined in the *Corporations Law* as at the date of these Rules have the meanings given to them in the *Corporations Law* at that date;
- (g) a reference to a document or agreement, including these Rules, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (h) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (i) headings are used for reference only and do not affect the construction of these Rules.

PART 2 - OVERRIDING RULES

2 OVERRIDING RULES

- 2.1 **Rules 3 and 4** apply notwithstanding anything to the contrary in any other part of these Rules.
- 2.2 **Rule 3** cannot be added to, revoked, amended, modified, varied, substituted, or replaced in whole or in part, except in accordance with that **rule 3**.
- 2.3 **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 OVERRIDING RULE PRIOR TO 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:

- (a) by the Minister by notice in writing to the Trustee; or

- (b) 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.

4 OVERRIDING RULE ONCE THE ACT COMES INTO FORCE

As from the Effective Date, the provisions of these Rules may, subject to the Act, be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part 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 this **Rule 4** 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 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, by more than:

- (a) 50% of all Workers;
- (b) 50% of all Employers; and
- (c) 50% of all Working Sub-Contractors,

who:

- (d) 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
- (e) voted at that referendum.

5 EFFECTIVE DATE

- 5.1 **Rules 1, 2, 3, 4** and this **Rule 5** operate from the Commencement Date.
- 5.2 Subject to **Rule 5.1** 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.

PART 3 -THE FUND

6 FUND

- 6.1 There is to be paid into the Fund:
 - (a) the Long Service Leave Charges paid to the Trustee under these Rules and in accordance with the Act in respect of persons doing Construction Work;
 - (b) the proceeds of investment of the Fund; and
 - (c) any other money paid into the Fund under these Rules.
- 6.2 There is to be paid out of the Fund:
 - (a) the Long Service Leave Benefits provided for under these Rules;

- (b) in accordance with the Trust Deed, the remuneration and expenses reasonably incurred by the Trustee in the administration of the Fund; and
- (c) any other money authorised to be paid from the Fund under these Rules.

7 ACTUARIAL INVESTIGATIONS

- 7.1 Investigations as to the state of sufficiency of the Fund must be made at such intervals as the Trustee determines, but at least one investigation must be made into the Fund at or before the expiration of each period of three years from the Commencement Date.
- 7.2 Investigations under this **rule 7** must be made by an actuary or two or more actuaries appointed by the Trustee.
- 7.3 The actuary or actuaries must report to the Trustee the result of his or their investigations and must state whether any reduction or increase is in his or their opinion necessary in the rates of contribution to the Fund and may include in that report a statement of any changes which the actuary or actuaries consider could be made to improve the efficiency of the administration of the Fund.

PART 4 - REGISTERS

8 REGISTER OF EMPLOYERS

- 8.1 The Trustee shall keep the Register of Employers.
- 8.2 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.
- 8.3 The Trustee may remove from the Register of Employers the name of any Employer who ceases to be an Employer in the Construction Industry.

9 REGISTER OF WORKING SUB-CONTRACTORS

- 9.1 The Trustee shall keep the Register of Working Sub-Contractors.
- 9.2 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.
- 9.3 The Trustee may remove from the Register of Working Sub-Contractors the name of any Working Sub-Contractor who ceases to perform Construction Work.

10 REGISTER OF WORKERS

- 10.1 The Trustee shall keep the Register of Workers.
- 10.2 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.
- 10.3 The Trustee may remove from the Register of Workers the name of any Worker who ceases to be a Worker in the Construction Industry.

PART 5 - CONTRIBUTIONS

11 LONG SERVICE LEAVE CHARGE

11.1 Payment of Long Service Leave Charge

After the last Pay Day in every Prescribed Period and within fourteen days after the end of that Prescribed Period:

- (a) every Employer shall in respect of every Worker (not being an apprentice) employed by him to perform Construction Work during that Prescribed Period; and
- (b) every Working Sub-Contractor (who has made an election under **rule 12**) shall in respect of Construction Work performed by him as a Working Sub-Contractor during that Prescribed Period,

pay to the Trustee a Long Service Leave Charge.

11.2 Amount of Long Service Leave Charge

The amount of the Long Service Leave Charge under **rule 11.1** shall be the prescribed percentage as determined from time to time by Special Resolution of the Directors of the Trustee (**'Prescribed Percentage'**) of:

- (a) in respect of:
 - (i) a Worker whose Ordinary Pay is less than the minimum rate of pay prescribed in the Award applicable to him or where there is no Award applicable to him in the Award most applicable to the type of Construction Work performed by him, the Ordinary Pay which would have been received by him during the Prescribed Period if he had been paid at the minimum rate of pay prescribed in the Award; or
 - (ii) any other Worker, the Ordinary Pay actually received by him during the Prescribed Period; or
- (b) in respect of a Working Sub-Contractor, the rate or rates as Prescribed for the year on or before 1 January of that year,

provided that the Prescribed Percentage must not exceed 3.0% (three per centum) or such other limitation as specified under the Act.

11.3 Amount of Long Service Leave Charge - Prescribed Percentage

- (a) Until otherwise determined by the Board, the Prescribed Percentage is zero.
- (b) The Trustee shall give all affected Employers and Working Sub-Contractors notice in writing of any change in the Prescribed Percentage, not less than 2 months prior to the change taking effect.

- (c) For the purposes of **rule 11.2** the Prescribed Percentage for Building Trades Work may be different from the Prescribed Percentage for Electrical Trades Work and Metal Trades Work.

11.4 Amount of Long Service Leave Charge - more than one kind of Construction Work

Where after the Effective Date a Worker (not being an apprentice) is employed by an Employer to perform more than one kind of Construction Work during any Prescribed Period, the Long Service Leave Charge required to be paid under **rule 11.1** or **11.2** shall be an amount which is the sum of:

- (a) where the Worker performed Building Trades Work during that Prescribed Period, the amount which bears the same relation to the whole amount which would have been payable to the Trustee if the Worker had been employed to perform Building Trades Work during the whole period of his employment by the Employer to perform Construction Work during that Prescribed Period as the period of his employment by the Employer to perform Building Trades Work bears to the whole period of his employment by the Employer to perform Construction Work during that Prescribed Period;
- (b) where the Worker performed Electrical Trades Work during that Prescribed Period the amount which bears the same relation to the whole amount which would have been payable to the Trustee if the Worker had been employed to perform Electrical Trades Work during the whole period of his employment by the Employer to perform Construction Work during that Prescribed Period as the period of his employment by the Employer to perform Electrical Trades Work bears to the whole period of his employment by the Employer to perform Construction Work during that Prescribed Period; and
- (c) where the Worker performed Metal Trades Work during that Prescribed Period, the amount which bears the same relation to the whole amount which would have been payable to the Trustee if the Worker had been employed to perform Metal Trades Work during the whole period of his employment by the Employer to perform Construction Work during that Prescribed Period as the period of his employment by the Employer to perform Metal Trades Work bears to the whole period of his employment by the Employer to perform Construction Work during that Prescribed Period.

11.5 Amount of Long Service Leave Charge - more than one kind of Construction Work

Where after the Effective Date any Working Sub-Contractor (who has made an election under **rule 12**) performs more than one kind of Construction Work as a Working Sub-Contractor during any Prescribed Period, the Long Service Leave Charge required to be paid under **rules 10.1 and 10.2** shall be an amount which is the sum of:

- (a) where the Working Sub-Contractor performed Building Trades Work as a Working Sub-Contractor during that Prescribed Period, the amount which bears the same relation to the whole amount which would have been payable to the Trustee if the Working Sub-Contractor had performed Building Trades Work during the whole period during which he performed Construction Work as a Working Sub-Contractor during that Prescribed Period as the period during which he performed Building Trades Work as a Working Sub-Contractor bears to the

whole period during which he performed Construction Work as a Working Sub-Contractor during that Prescribed Period;

- (b) where the Working Sub-Contractor performed Electrical Trades Work as a Working Sub-Contractor during that Prescribed Period, the amount which bears the same relation to the whole amount which would have been payable to the Trustee if the Working Sub-Contractor had performed Electrical Trades Work during the whole period during which he performed Construction Work as a Working Sub-Contractor during that Prescribed Period as the period during which he performed Electrical Trades Work bears to the whole period during which he performed Construction Work as a Working Sub-Contractor during that Prescribed Period; and
- (c) where the Working Sub-Contractor performed Metal Trades Work as a Working Sub-Contractor during that Prescribed Period, the amount which bears the same relation to the whole amount which would have been payable to the Trustee if the Working Sub-Contractor had performed Metal Trades Work during the whole period during which he performed Construction Work as a Working Sub-Contractor during that Prescribed Period as the period during which he performed Metal Trades Work as a Working Sub-Contractor bears to the whole period during which he performed Construction Work as a Working Sub-Contractor during that Prescribed Period.

11.6 Meaning of 'Pay Day'

A reference in this **rule 11** to a Pay Day is a reference to a day on which the Worker was paid for the work done by him.

11.7 Meaning of Ordinary Pay

In **rule 11.2(a)** 'Ordinary Pay' of a Worker means the total amount of remuneration actually received by him during that Prescribed Period, and includes (without limiting the generality of the foregoing):

- (a) any remuneration paid during the taking of any annual leave by the Worker or absence from work of the Worker by reason of:
 - (i) illness or injury of the Worker (other than any absence by reason of an injury arising out of or in the course of the employment of the Worker);
 - (ii) the Worker complying with a summons to appear as a juror;
 - (iii) the Worker appearing to give evidence before any court, body or person before whom or which a person may by law be required to appear to give evidence; or
 - (iv) the Worker taking compassionate leave as prescribed by any Award;
- (b) any remuneration paid upon the dismissal of the Worker in respect of annual leave to which he was entitled but which he had not taken; and
- (c) (subject to **rule 11.9**) where the Worker is provided with board or lodging by his Employer or receives any payment from his Employer in respect of board or

lodging - the cash value of that board or lodging or the amount of that payment (as the case may be),

but does not include:

- (d) any remuneration paid in respect of work performed by the Worker outside his normal weekly number of hours of work;
- (e) any allowance paid in respect of fares or travelling expenses; or
- (f) any loading paid in respect of remuneration paid during the taking of any annual leave.

11.8 Meaning of Ordinary Pay

For the purposes of the definition of ‘Ordinary Pay’ in **rule 11.7**:

- (a) where no normal weekly number of hours is fixed for a Worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours of work worked by him during the period of twelve months immediately before the last Pay Day in that Prescribed Period; and
- (b) the cash value of any board or lodging provided for a Worker is deemed to be its cash value as fixed by or under the terms of the Worker’s employment or, if it is not so fixed, shall be computed at the rate of \$2 per week for board and \$1 per week for lodging.

11.9 Board and Lodging

For the purposes of the definition of ‘Ordinary Pay’ in **rule 11.7**, the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment made not as part of the work’s Ordinary Pay but because the work done by the Worker is done in such a place as to require him to sleep elsewhere than at his normal place of residence or because of other special circumstances.

11.10 Casual Workers

Nothing in this **rule 11** shall apply to or in relation to any employment of a Worker by a particular Employer for less than five days in any month.

11.11 Meaning of Prescribed Period

In this **rule 11** a Prescribed Period is any period of two months determined by the Trustee. The Trustee may at any time change the Prescribed Periods determined under this **rule 11.11**. The Trustee may determine different Prescribed Periods for different classes of Employers.

12 WORKING SUB-CONTRACTOR MAY ELECT TO CONTRIBUTE ETC.

- 12.1 A Working Sub-Contractor registered under **rule 9** may by writing addressed to the Trustee elect to pay Long Service Leave Charges as required by this Part 5 in respect of Construction Work performed by himself.
- 12.2 Parts 5 and 6 of these Rules do not apply to or in relation to a Working Sub-Contractor who has not made an election under this **rule 12** in respect of Construction Work performed by himself unless and until by writing addressed to the Trustee he makes that election.
- 12.3 Parts 5 and 6 of these Rules apply to a Working Sub-Contractor who has made an election under this **rule 12** unless and until by writing addressed to the Trustee he revokes that election.
- 12.4 Where before revoking an election under this **rule 12** a Working Sub-Contractor had paid Long Service Leave Charges to the Trustee in respect of Construction Work performed by himself, he may apply to the Trustee for a refund of those charges, which refund shall be paid from the Fund.

13 PAYMENT OF CHARGES FOR CERTAIN INTERSTATE WORKERS

- 13.1 Where an Employer who employs Workers in Construction Work in Victoria also employs Workers in Construction Work in a State other than Victoria or in a Territory, he may pay to the Trustee a Long Service Leave Charge calculated in accordance with **rule 11** in respect of each such Worker (other than an apprentice), in respect of the work done in that other State or that Territory.
- 13.2 Where a Working Sub-Contractor, who has made an election under **rule 12**, performs Construction Work in Victoria and in a State other than Victoria or in a Territory, he may pay to the Trustee a Long Service Leave Charge calculated in accordance with **rule 11** in respect of the work performed in that other State or that Territory.
- 13.3 Any payment made to the Trustee under this **rule 13.3** shall be and be deemed to be a Long Service Leave Charge paid under these Rules.

14 PAYMENT OF CHARGES FOR CERTAIN WORKERS OVERSEAS

- 14.1 Where an Employer who employs Workers in Construction Work in Victoria also employs Workers in Construction Work in any place outside Australia, he may pay to the Trustee a Long Service Leave Charge calculated in accordance with this **rule 14.1** in respect of each such Worker (other than an apprentice), in respect of the work performed in that place, and such payment shall be and be deemed to be a Long Service Leave Charge paid under these Rules.
- 14.2 Where a Working Sub-Contractor, who has made an election under **rule 12**, performs Construction Work in Victoria and in any place outside Australia, he may pay to the Trustee a Long Service Leave Charge calculated in accordance with **rule 11** in respect of the work performed in that place, and such payment shall be and be deemed to be a Long Service Leave Charge paid under these Rules.
- 14.3 Subject to **rule 14.4**, the amount of the Long Service Leave Charge which may be paid under **rule 14.1** by an Employer shall be the amount which would have been payable under

rule 11 in respect of the Worker employed outside Australia immediately before he commenced work outside Australia if he had been employed in Construction Work in Victoria at that time.

- 14.4 Where under **rule 14.1** an Employer is paying a Long Service Leave Charge in respect of a Worker employed outside Australia, the amount of the Long Service Leave Charge may be increased from time to time if the Trustee so determines.
- 14.5 In determining whether or not the amount of a Long Service Leave Charge which may be paid under **rule 14.1** should be increased, the Trustee shall have regard to any increases which have occurred in the rate of pay prescribed in the Award which is most applicable to the type of Construction Work performed by the Worker outside Australia.

15 EXEMPTION FROM LONG SERVICE LEAVE CHARGE

- 15.1 An Employer who:
- (a) is domiciled in a State other than Victoria or in a Territory and employs Workers to perform Construction Work in Victoria; or
 - (b) is domiciled in Victoria and employs Workers to perform Construction Work in Victoria and in a State other than Victoria or in a Territory,
- may apply to the Trustee to be exempted from the requirement under **rule 11** to pay Long Service Leave Charges in respect of any Worker or class of Workers employed by him to perform Construction Work in Victoria.
- 15.2 If the Trustee is satisfied that any Worker or class of Workers employed by an applicant under **rule 15.1** to perform Construction Work in Victoria is covered by a like scheme relating to the payment of Long Service Leave payments in a State other than Victoria or in a Territory, the Trustee may exempt the applicant from the requirement under **rule 11** to pay Long Service Leave Charges in respect of that Worker or Workers of that class.
- 15.3 The Trustee may at any time revoke any exemption under **rule 15.2**, and the Employer or Working Sub-Contractor the subject of the exemption shall from the time of revocation be liable to pay Long Service Leave Charges as required by **rule 11**.

16 TRUSTEE MAY ESTIMATE CHARGES

- 16.1 Where from returns furnished pursuant to these Rules or from such other information as satisfies the Trustee it appears to the Trustee:
- (a) that any work that has been performed (whether before or after the commencement of this **rule 16.1**) is Construction Work;
 - (b) that such work was performed by a Worker for an Employer or by a Working Sub-Contractor who has made an election under **rule 12**;
 - (c) that the Employer or Working Sub-Contractor is liable to pay Long Service Leave Charges to the Trustee in respect of the work performed for him or by him (as the case may be); and
 - (d) that those Long Service Leave Charges have not been paid,

and where there is insufficient information available to the Trustee to enable the amount of the Long Service Leave Charges due in respect of such work to be calculated in accordance with **rule 11**, the Trustee may estimate and make an assessment of the amount of Long Service Leave Charges that in its opinion are due from the Employer or Working Sub-Contractor in respect of the work performed for him or by him (as the case may be).

- 16.2 The Trustee may estimate and make an assessment under **rule 16.1**, notwithstanding that there is insufficient information available to the Trustee to enable the Trustee to identify the Worker who performed the Construction Work for an Employer.
- 16.3 In making an assessment under **rule 16.1**, the Trustee may have regard to:
- (a) the prevailing rates of pay for the type of work the subject of the assessment at the time when that work was performed; and
 - (b) (where the work the subject of the assessment was performed for an Employer) any records kept by an Employer or other information relating to amounts paid by the Employer in respect of the work performed for him.
- 16.4 The Trustee shall cause notice of any assessment made under this **rule 16.4** to be served on the Employer or Working Sub-Contractor to whom the assessment relates.
- 16.5 The Employer or Working Sub-Contractor to whom the assessment relates may within a period of 28 days from the date of service of the notice referred to in **rule 16.4**, lodge with the Trustee a notice in writing objecting to the assessment and setting out the grounds of such objections.
- 16.6 The Trustee shall consider every such written objection and may affirm or vary the assessment objected to.
- 16.7 In considering an objection to an assessment under this **rule 16.7** the Trustee shall have regard to the written objection of the Employer or Working Sub-Contractor and may otherwise inform itself in such manner as it thinks fit, but except as provided by this **rule 16.7 and rule 45** the Trustee is not required to give to any person notice of or an opportunity to answer or to be heard in relation to any matter taken into account by the Trustee in making the assessment or considering the objection to the assessment.
- 16.8 After considering any objection or if there is no objection, after the expiration of 28 days from the date of service of the notice referred to in **rule 16.4**, the Trustee shall certify its assessment and subject to **rule 16.9** the certified assessment shall be deemed to be the amount of Long Service Leave Charges in respect of the relevant work due to and recoverable by the Trustee in accordance with these Rules.
- 16.9 The Trustee shall cause notice of the certification under **rule 16.8** of an assessment to be sent to the Employer or Working Sub-Contractor to whom the assessment relates.

17 APPEALS AGAINST CERTIFIED ASSESSMENTS

An Employer or Working Sub-Contractor to whom a certified assessment under **rule 16** applies may within fourteen days from the date of service of notice of that certified assessment lodge an objection with the Trustee pursuant to **rule 46**.

PART 6 - ENTITLEMENTS AND PAYMENTS

18 'ORDINARY PAY'

18.1 In this Part 6 of these Rules, '**Ordinary Pay**' of a Worker in respect of whom any entitlement to Long Service Leave Benefit or pay in lieu of Long Service Leave Benefit:

- (a) accrued before 27 May 1987, means remuneration for the Worker's normal weekly number of hours of work calculated at his ordinary time rate of pay as at the time of the taking of the leave by the Worker or as at the time of his death (as the case may be); or
- (b) accrues on or after 27 May 1987, means the total amount of remuneration actually received by him during a week calculated as at the date of the taking of the leave by the Worker or as at the time of his death (as the case may be), but does not include:
 - (i) any remuneration paid in respect of work performed by the Worker outside his normal weekly number of hours of work;
 - (ii) any allowance paid in respect of fares or travelling expenses; or
 - (iii) any loading paid in respect of remuneration paid during the taking of any annual leave,

and, subject to **rule 18.3**, where the Worker is provided with a board or lodging by his Employer or receives any payment from his Employer in respect of board or lodging, includes the cash value of that board or lodging or the amount of that payment (as the case may be).

18.2 For the purpose of the definition of 'Ordinary Pay' in **rule 18.1**:

- (a) where no ordinary time rate was fixed for a Worker's work under the terms of his employment, the ordinary time rate of pay shall be deemed where the entitlement accrued before the commencement of this **rule 18.2**, to be the average weekly rate earned by him during the period of twelve months immediately prior to the date of the taking of the leave by the Worker or as at the time of his death (as the case may be);
- (b) where no normal weekly number of hours is fixed for a Worker under the terms of his employment the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during that period of twelve months; and
- (c) the cash value of any board or lodging provided for a Worker shall be deemed to be its cash value as fixed by or under the terms of the Worker's employment or, if it is not so fixed, shall be computed at the rate of \$2 per week for board and \$1 per week for lodging.

18.3 For the purposes of the definition of 'Ordinary Pay' in **rule 18.1**, the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment made not as part of the

Worker's Ordinary Pay but because the work done by the Worker is done in such a place as to require him to sleep elsewhere than at this normal place of residence or because of any other special circumstances.

18.4 Where a Working Sub-Contractor is employed as a Worker, '**Ordinary Pay**' in relation to his employment as a Worker means remuneration for the normal weekly number of hours worked calculated at the ordinary time rate of pay fixed in an Award setting out rates of pay in relation to Construction Work which is current as at the time of the taking of the leave by the Working Sub-Contractor or as at the time of his death (as the case may be) for the classification of Construction Work performed by the Working Sub-Contractor as a Worker.

18.5 Notwithstanding the preceding provisions of this **rule 18**, in this Part '**Ordinary Pay**' of a Worker in respect of whom:

- (a) immediately before the date of the taking of the leave or the time of his death (as the case may be) Long Service Leave Charges were being paid under **rule 14**; and
- (b) any entitlement to Long Service Leave Benefit or pay in lieu of Long Service Leave Benefit accrues on or after the Effective Date,

means the remuneration which he would have been receiving if immediately before the date of the taking of the leave or the time of his death (as the case may be) he had been working in the Construction Industry in Victoria.

19 DETERMINATION OF ORDINARY PAY WHERE ORDINARY PAY EXCESSIVE

19.1 Where an entitlement to Long Service Leave Benefit or pay in lieu of Long Service Leave Benefit accrues in respect of a Worker, and it appears to the Trustee that his Ordinary Pay calculated in accordance with **rule 18** 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 him in respect of any work performed by him at any time material to the calculation,

the Trustee may by notice in writing served on the Worker or his personal representative (as the case requires) inform the Worker or his personal representative that, unless he satisfies the Trustee that it should not do so, the Trustee proposes to determine the Worker's Ordinary Pay at a lesser amount.

19.2 Any notice under **rule 19.1** shall specify a time within which the Worker or his personal representative may make a written submission to the Trustee that his Ordinary Pay as calculated in accordance with **rule 18** is not excessive by reason of either of the matters referred to in **rule 19.1**.

19.3 Where:

- (a) a written Submission is not made within the time specified; or

- (b) a written submission does not satisfy the Trustee that the Ordinary Pay of a Worker calculated in accordance with **rule 18** is not excessive by reason of either of the matters referred to in **rule 19.1(a) or (b)**,

the Trustee may determine the Ordinary Pay of the Worker to be paid in respect of or in lieu of a Long Service Leave Benefit under these Rules at such amount (being less than the Ordinary Pay as calculated in accordance with **rule 18**) as the Trustee thinks fit.

- 19.4 In making a determination under this **rule 19.4** the Trustee shall have regard to any written submission and may otherwise inform itself in such manner as it thinks fit, but except as provided by this **rule 19.4** the Trustee is not required to give to any person notice of or an opportunity to answer or to be heard in relation to any matter taken into account by the Trustee in making the determination.
- 19.5 The Trustee shall cause notice of its determination to be served on the Worker or his personal representative.
- 19.6 A Worker or his personal representative may, within fourteen days after the date of service of the notice under **rule 19.5**, appeal against the determination in accordance with **rules 45 and 46**.
- 19.7 The Ordinary Pay of a Worker is determined under this **rule 19** shall, notwithstanding anything to the contrary in these Rules, be the Ordinary Pay to be paid in respect of or in lieu of a Long Service Leave Benefit.

20 DETERMINATION OF ORDINARY PAY WHERE IT APPEARS INSUFFICIENT

- 20.1 Where an entitlement to Long Service Leave Benefit or pay in lieu of Long Service Leave Benefit accrues in respect of a Worker, and it appears to the Trustee that his Ordinary Pay calculated in accordance with **rule 18** is insufficient by reason of either of the matters referred to in **rule 19.1 (a) or (b)** the Trustee may determine the Ordinary Pay of the Worker to be paid in respect of or in lieu of Long Service Leave under these Rules at such amount (being greater than the Ordinary Pay as calculated in accordance with **rule 18**) as the Trustee thinks fit.
- 20.2 The Trustee shall cause notice of its determination to be served on the Worker or his personal representative.
- 20.3 The Ordinary Pay of a Worker as determined under this **rule 20.3** shall, notwithstanding anything to the contrary in these Rules, be the Ordinary Pay to be paid in respect of or in lieu of Long Service Leave under these Rules.

21 WHAT CONSTITUTES CONTINUOUS SERVICE

- 21.1 For the purposes of these Rules, service in the Construction Industry shall be deemed to be continuous notwithstanding:
- (a) the taking of any annual leave or Long Service Leave;
 - (b) any continuous absence from work of not more than 48 weeks on account of illness or injury which occurred during a period when the Worker's employment

was in the Construction Industry if the Worker does not engage in any employment for hire or reward and where the Trustee requests a certificate, if the absence is certified to be necessary by a registered medical practitioner within the meaning of the *Medical Practice Act 1994*;

- (c) any interruption or ending of employment by any Employer if the interruption or ending was made with the intention of avoiding obligations in respect of Long Service Leave or annual leave;
- (d) any absence from work of a Worker for the purpose of:
 - (i) complying with a summons to appear as a juror;
 - (ii) appearing to give evidence before any court, body or person before whom or which a person may by law be required to appear to give evidence; or
 - (iii) taking compassionate leave prescribed by any Award;
- (e) any period of Continuous Service as a Working Sub-Contractor other than as a Working Sub-Contractor who has not made an election under **rule 12**;
- (f) any interruption arising directly or indirectly from an industrial dispute;
- (g) the standing down of a Worker due to a slackness of trade;
- (h) any continuous absence from work in excess of two years on account of illness or injury which occurred during a period when the Worker's employment was in the Construction Industry if the absence is certified to be necessary by a legally qualified medical practitioner;
- (i) any other absence from work of a Worker by leave of the Employer of the Worker;
- (j) any period during which a Worker serves as a full-time officer of a trade union that represents Workers employed to perform Construction Work of any kind;
- (k) any other interval between periods of employment in the Construction Industry that does not exceed two years; or
- (l) any interval exceeding two years between periods of employment in the Construction Industry where the Trustee because of the special circumstances of the case deems those periods to be Continuous Service in the Construction Industry for the purposes of this **rule 21.1**.

21.2 Where a Worker has upon dismissal received any remuneration in respect of annual leave to which he was entitled but which he had not taken, the period of that annual leave shall, notwithstanding that that annual leave has not been taken, be taken into account for the purposes of calculating the Worker's Continuous Service in the Construction Industry.

21.3 In respect of a Worker employed by a corporation, any period of employment by a corporation which is a related body corporate (within the meaning of section 50 of the *Corporations Law*, for the purposes of calculating the period of continuous employment of

that Worker by an Employer, be deemed to be employment by the first-mentioned corporation.

- 21.4 In calculating the period of Continuous Service in the Construction Industry of the Worker, any interruption or absence of a kind mentioned in **rule 21.1** (a) to (e) and any period of Continuous Service as a registered Working Sub-Contractor where contributions in respect of that service have been made to, and remain in the Fund, shall be counted as part of the period of his service in the Construction Industry, but any period of Continuous Service as a Working Sub-Contractor where no contributions in respect of that service are in the Fund, and any interruption or absence of a kind mentioned in **rule 21.1** (f) to (1) shall not be counted as part of the period of his service in the Construction Industry.
- 21.5 In calculating the period of Continuous Service in the Construction Industry of a Worker, any period during which the Worker was employed in Construction Work outside Victoria shall not be counted as part of the period of that service unless Long Service Leave Charges were paid under **rules 12** or **13** (as the case may be) in respect of the Worker while he was so employed.
- 21.6 Where a business is whether before or after the commencement of this **rule 21.6** transmitted from an Employer (in this **rule 21.6** called the ‘transmittor’) to another Employer (in this **rule 21.6** called the ‘transmittee’) and the Worker who at the time of the transmission is an employee of the transmittor in the business becomes an employee of the transmittee:
- (a) the continuity of the employment of the Worker shall be deemed not to have been broken by the transmission;
 - (b) the period of employment which the Worker has had with the transmittor or any prior transmittor shall be deemed to be employment of the Worker with the transmittee.
- 21.7 In **rule 21.6**, ‘**business**’ includes trade process business or occupation, and includes part of any such business; ‘**transmission**’ includes transfer conveyance assignment or succession whether by agreement or by operation of law; and ‘**transmitted**’ has a corresponding interpretation.
- 21.8 Any period of 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 or as a member of the Civil Construction Corps established under the Commonwealth Act known as the *National Security Act 1939* shall be deemed to be employment by the Employer by whom the Worker concerned was last employed before he commenced to serve as a member.
- 21.9 For the purposes of **rule 21.8**, in the case of a Worker whose last employment was temporary employment during a stand-down period ‘**Employer by whom the Worker concerned was last employed**’ means the Employer who stood down the Worker.
- 21.10 Where an assessment has been made under **rule 16** in respect of Construction Work performed for an Employer by a Worker who could not be identified, any person may apply to the Trustee for a determination that long service charges made in accordance with that assessment were in respect of work performed by him.

- 21.11 Where the Trustee determines that an applicant under **rule 16** is the Worker who performed the work in respect of which Long Service Leave Charges were made in accordance with an assessment under **rule 16**, the period during which that Worker performed that work shall be taken into account for the purpose of calculating that Worker's Continuous Service in the Construction Industry.
- 21.12 For the purposes of these Rules, service in the Construction Industry shall be deemed to be continuous notwithstanding any interval between periods of employment in the Construction Industry -

- (a) which commenced before the commencement of the Trust Deed (or these Rules);
- (b) which (whether the interval ends before or after the commencement of (or these Rules) exceeded nine months before the commencement of (or these Rules); and
- (c) before which the Worker was employed to perform Building Trades Work -

where the Trustee because of the special circumstances of the case deems those periods of employment to be Continuous Service in the Construction Industry for the purposes of this **rule 21**.

22 CONTINUOUS SERVICE OF WORKING SUB-CONTRACTOR

- 22.1 In calculating the period of Continuous Service in the Construction Industry of a Working Sub-Contractor, service shall be deemed to be continuous notwithstanding:
- (a) any interruption of contribution prior to 1 April 1980 by a Working Sub-Contractor who was registered under section 11 of the *Building Industry Long Service Leave Act 1975* prior to that date;
 - (b) any interruption of contribution not exceeding two years; or
 - (c) any service as a Worker which would constitute Continuous Service under **rule 21**.
- 22.2 Service by a Working Sub-Contractor as a Worker shall not be counted as part of his service in the Construction Industry where the Working Sub-Contractor has failed to pay to the Trustee Long Service Leave Charges for a continuous period of two years.

23 DETERMINATION OF ENTITLEMENT OF WORKER

- 23.1 For the purpose of determining any entitlement under these Rules, any service in the Construction Industry in respect of Building Trades Work before 21 December 1973 of any Worker not employed on that date by an Employer to perform Building Trades Work shall be disregarded.
- 23.2 For the purpose of determining any entitlement under these Rules, any service in the Construction Industry in respect of Building Trades Work before 21 December 1973 of any Worker who was employed on that date by an Employer to perform Building Trades Work shall be disregarded except to the extent that:
- (a) it was in the employment of the Employer by whom he is employed on that date; and

- (b) it constituted permanent service in the Construction Industry extending as far as and including that date.

23.3 For the purpose of determining any entitlement under these Rules, any service in the Construction Industry in respect of Electrical Trades Work or Metal Trades Work before 1 March 1978 of any Worker not employed on that date by an Employer to perform Electrical Trades Work or Metal Trades Work shall be disregarded.

23.4 For the purpose of determining any entitlement under these Rules, any service in the Construction Industry in respect of any Electrical Trades Work or Metal Trades Work before 1 March 1978 of any Worker who was employed on that date by an Employer to perform Electrical Trades Work or Metal Trades Work shall be disregarded except to the extent that:

- (a) it was in the employment of the Employer by whom he is employed on that date; and
- (b) it constituted permanent service in the Construction Industry extending as far as and including that date.

23.5 In **rules 23.2 and 23.4** ‘**permanent service in the Construction Industry**’ means service in the Construction Industry which would be required under **rule 21** to be treated as continuous if paragraphs (g), (j), (k) and (1) of **rule 21.1** did not form part thereof.

23.6 For the purpose of determining any entitlement under these Rules, any service in the Construction Industry before 26 November 1933 shall be disregarded.

23.7 For the purposes of determining any entitlement under these Rules, any period of Continuous Service in the Construction Industry of a Worker during which he is not registered under **rule 10** will be disregarded, except to the extent (if any) that the Trustee otherwise determines.

23.8 For the purpose of determining any entitlement under these Rules, any period of Continuous Service in the Construction Industry consisting of continuous employment by a particular Employer for less than five days in any month shall be disregarded.

23.9 For the purpose of determining any entitlement under these Rules, any Long Service Leave or payment in lieu of Long Service Leave granted to a Worker in respect of any service in the Construction Industry which is under these Rules taken into account in computing the Worker’s entitlement to Long Service Leave under these Rules shall be taken into account and be deemed to have been leave taken under these Rules.

24 DETERMINATION OF ENTITLEMENT OF A WORKING SUB-CONTRACTOR

24.1 For the purpose of determining any entitlement of a Working Sub-Contractor under these Rules:

- (a) any period of Continuous Service in the Construction Industry as a Worker registered under **rule 10** shall be taken into account;
- (b) any period of Continuous Service in the Construction Industry during which he is not registered under **rule 9** shall be disregarded except to the extent (if any) that the Trustee may determine;

- (c) any period of Continuous Service in the Construction Industry for less than five days in any month shall be disregarded;
- (d) any Long Service Leave or payment in lieu of Long Service Leave granted to a Working Sub-Contractor in respect of any service in the Construction Industry which is under these Rules taken into account in computing a Working Sub-Contractor's entitlement to Long Service Leave Benefits under these Rules must be taken into account and be deemed to have been Long Service Leave Benefits provided under these Rules.

24.2 For the purposes of **rule 24.1**, where on 1 April 1980 a Working Sub-Contractor was registered under section 11 of the ***Building Industry Long Service Leave Act 1975*** or before 1 July 1980 he became so registered:

- (a) any period of Continuous Service in the Construction Industry in respect of Building Trades Work as a Working Sub-Contractor on or after 21 December 1973 and before 1 April 1978 shall be taken into account;
- (b) where he was employed as a Worker on or after 21 December 1973 and before 1 April 1978 he became a Working Sub-Contractor, his entitlement shall be determined in accordance with **rule 23** as if he were a Worker;
- (c) where he was employed both as a Worker and a Working Sub-Contractor on or after 21 December 1973 and before 1 April 1978 and his service was continuous, his service in the Construction Industry in respect of Building Trades Work as a Working Sub-Contractor shall be taken into account and his entitlement for his service in the industry as a Worker shall be determined in accordance with **rule 23** as if he were a Worker;
- (d) any period of Continuous Service in respect of Building Trades Work as a Working Sub-Contractor on or after 1 April 1978 and before 1 April 1980 which if it had been service as a Worker would constitute Continuous Service under **rule 21** must be taken into account.

24.3 In calculating the period of service in the Construction Industry of the Working Sub-Contractor any period of interruption of contribution (save any interruption occurring on or after 1 April 1978 and before 1 April 1980) exceeding one month shall not be counted as part of the period of his service in the Construction Industry.

25 DETERMINATION OF INTEREST PAYABLE TO WORKING SUB-CONTRACTOR

25.1 Where a Working Sub-Contractor pays to the Trustee pursuant to **rule 11.1(b)** a Long Service Leave Charge there shall be credited to him such charge, together with an amount being interest thereon calculated from the date of receipt of the payment of such charge at such a rate determined on or after 30 June in each year for the preceding financial year by the Trustee as being appropriate after taking into account the expenses incurred in administering the Fund into which the Long Service Leave Charge is paid under these Rules but shall not be less than 75 per centum of the rate of interest expressed as a percentage earned by the Fund as calculated by the formula:

$$\frac{2i}{(a + b) - i} \times 100$$

Where -

- a* means the amount of the Fund at the beginning of that financial year;
- b* means the amount of the Fund at the end of that financial year;
- i* means the amount of interest earned by the Fund during that financial year.

25.2 The Trustee shall determine an interim rate from time to time prior to determination of the rate pursuant to **rule 25.1**.

25.3 In this Part '**interest at the determined rate**', in relation to the entitlement of a Working Sub-Contractor, means interest at the rate determined by the Trustee under this **rule 25.3**.

26 DATE OF TERMINATION OF SERVICE

In determining for the purposes of these Rules the date on which a Worker's service in the Construction Industry is terminated, the period of any Long Service Leave to which the Worker is entitled but which the Worker has not taken shall be disregarded except for the purposes of calculating a period of Continuous Service in the Construction Industry.

27 ENTITLEMENT TO LONG SERVICE LEAVE OF WORKER

27.1 Every Worker is entitled to a Long Service Leave Benefit in respect of Continuous Service in the Construction Industry (whether before or after the commencement of the Trust Deed (or these Rules)).

27.2 The amount of the entitlement is:

- (a) on the completion by a Worker of fifteen years' Continuous Service in the Construction Industry - 13 weeks' Long Service Leave and thereafter an additional four and one-third weeks' Long Service Leave on the completion of each additional five years of Continuous Service in the Construction Industry;
- (b) in addition, in the case of a Worker who has completed more than fifteen years' Continuous Service in the Construction Industry and whose service in the Construction Industry is terminated otherwise than by the death of the Worker - an amount of Long Service Leave equal to one-sixtieth of the period of his Continuous Service in the Construction Industry since the last accrual of entitlement to Long Service Leave under paragraph (a);
- (c) in the case of a Worker who has completed at least 10 but less than 15 years of Continuous Service in the Construction Industry and whose service in the Construction Industry is terminated for any cause other than by the Employer for serious and wilful misconduct - an amount of Long Service Leave equal to one-sixtieth of the period of his Continuous Service in the Construction Industry.

28 ENTITLEMENT OF WORKING SUB-CONTRACTOR

- 28.1 Every Working Sub-Contractor is entitled to a Long Service Leave Benefit under these Rules in respect of Continuous Service in the Construction Industry as a Working Sub-Contractor (whether before or after the commencement of the Trust Deed (or these Rules)).
- 28.2 The amount of the entitlement shall be:
- (a) on the completion by a Working Sub-Contractor of fifteen years' Continuous Service in the Construction Industry and thereafter on the completion of each additional five years of Continuous Service in the Construction Industry – a refund of his total contributions for the relevant period together with interest at the determined rate;
 - (b) in the case of a Working Sub-Contractor who has completed at least ten but less than fifteen years' Continuous Service in the Construction Industry and whose service in the Construction Industry is terminated – a refund of his total contributions together with interest at the determined rate.
- 28.3 Where the entitlement accrues the Trustee must pay from the Fund to the Working Sub-Contractor forthwith the Long Service Leave Benefits to which he is entitled.

29 ENTITLEMENT OF PERSON AS BOTH WORKER AND WORKING SUB-CONTRACTOR

- 29.1 Every person who has or had Continuous Service in the Construction Industry (whether before or after the Effective Date) as a Working Sub-Contractor and as a Worker is entitled to benefits under the Trust Deed and these Rules in respect of that Continuous Service in the Construction Industry.
- 29.2 This entitlement shall accrue
- (a) on the completion of fifteen years' Continuous Service in the Construction Industry and thereafter on the completion of each additional five years' Continuous Service in the Construction Industry;
 - (b) in the case of a person who has completed at least ten years but less than fifteen years' Continuous Service in the Construction Industry and whose service in the Construction Industry is terminated by the person, on termination.
- 29.3 The amount of the entitlement shall be:
- (a) for a person who is a Worker at the time the entitlement accrues, such amount of Long Service Leave as equals one-sixtieth of the period of his Continuous Service in the Construction Industry as a Worker and a refund from the Fund of his total contributions together with interest at the determined rate;
 - (b) for a person who is a Working Sub-Contractor at the time the entitlement accrues, a refund from the Fund of his total contributions together with interest at the determined rate and a sum equal to such amount of his Ordinary Pay as equals one-sixtieth of the period of his Continuous Service in the Construction Industry as a Worker.

- 29.4 In addition to the amount of entitlement under **rule 29.3** in the case of a person who has completed more than fifteen years' Continuous Service in the Construction Industry and whose service in the Construction Industry is terminated otherwise than by the death of the person the amount of the entitlement is an amount of Long Service Leave Benefit equal to one-sixtieth of the period of his Continuous Service in the Construction Industry since the last accrual of entitlement to Long Service Leave Benefit under **rule 29.3(a)** and a refund of his total contributions together with interest at the determined rate since the last accrual of entitlement to Long Service Leave Benefit under **rule 29.3(a)**.

30 ENTITLEMENT WHERE SERVICE IN CONSTRUCTION INDUSTRY TERMINATED BEFORE LEAVE TAKEN OR REFUND MADE

30.1 Where:

- (a) a Worker is entitled to any amount of Long Service Leave Benefit or where he has made contributions as a Working Sub-Contractor and is entitled to a refund of his contributions or both; and
- (b) the Worker's service in the Construction Industry is terminated (otherwise than by the death of the Worker) on or after his becoming so entitled but before he has taken the leave or received a refund of his contributions:

there must be paid to the Worker from the Fund an amount equal to the amount of the Ordinary Pay that would have been payable to the Worker in respect of the period of Long Service Leave not taken by the Worker less any amount already paid to the Worker in respect of any of the leave not taken together with a refund of his contributions together with interest thereon at the determined rate.

- 30.2 The amount referred to in **rule 30.1** becomes payable to the Worker immediately upon receipt by the Trustee of notification of the termination of the Worker's service in the Construction Industry.

- 30.3 Notwithstanding anything to the contrary in **rule 30.2**, the payment of the amount referred to in **rule 30.1** may be postponed until such date as is agreed to between the Worker and the Trustee.

- 30.4 The amount referred to in **rule 30.1** shall be paid to the Worker:

- (a) in full; or
- (b) in any other way agreed between the Worker and the Trustee.

- 30.5 During a period after a Worker's service in the Construction Industry is terminated and in respect of which an amount referred to in **rule 30.1** is paid to the person who was that Worker:

- (a) that person shall not engage in any employment for hire or reward; and
- (b) if that person engages in any employment for hire or reward that person shall on receiving a written demand from the Trustee repay the amount referred to in **rule 30.1**.

31 PAYMENT IN LIEU OF LONG SERVICE LEAVE ON DEATH OF WORKER

- 31.1 If a Worker who is entitled to any amount of Long Service Leave Benefit dies before or while taking the leave, there shall be payable from the Fund to his personal representative the sum equal to the amount of Ordinary Pay that would have been payable to the Worker in respect of the period of Long Service Leave not taken by the Worker less any amount already paid to the Worker in respect of any of the leave not taken.
- 31.2 Where a Worker who has completed more than fifteen years of Continuous Service in the Construction Industry dies while still employed by an Employer to perform Construction Work or (if he is not so employed) while he is engaged in Continuous Service in the Construction Industry within the meaning of **rule 21**, there is payable from the Fund (in addition to any sum payable under **rule 31.1**) to his personal representative in respect of any period ('the fractional period') of his Continuous Service in the Construction Industry which occurs after the last accrual of entitlement to Long Service Leave under **rule 27.2(a)** a sum equal to the amount of his Ordinary Pay for a period equalling one-sixtieth of the fractional period.
- 31.3 Where a Worker who has completed at least ten but less than fifteen years of Continuous Service in the Construction Industry dies while still employed by an Employer to perform Construction Work or (if he is not so employed) while he is engaged in Continuous Service in the Construction Industry within the meaning of **rule 21**, there shall be payable from the Fund to his personal representative a sum equal to the amount of his Ordinary Pay for a period equalling one-sixtieth of the period of his Continuous Service in the Construction Industry.
- 31.4 Where a Working Sub-Contractor who is entitled to a refund of contributions dies before he is paid an amount equal to his contributions together with interest at the determined rate there shall be payable from the Fund to his personal representative that amount together with that interest.
- 31.5 Where a person who is entitled to an amount of Long Service Leave and a refund of contributions dies before or while taking the leave or before he is paid an amount equal to his contributions together with interest at the determined rate or both, there shall be payable from the Fund either or both (as the case requires):
- (a) a sum equal to the amount of his Ordinary Pay for a period equalling one-sixtieth of his Continuous Service as a Worker in the Construction Industry;
 - (b) a refund of his contributions together with interest thereon at the determined rate.

32 CERTAIN REFUNDS TO WORKING SUB-CONTRACTORS

- 32.1 Where on the application of a Working Sub-Contractor or a Worker who is registered under **rule 10** and who has been a Working Sub-Contractor in the Construction Industry the Trustee is satisfied that:
- (a) the Working Sub-Contractor or registered Worker is not entitled to any Long Service Leave Benefit or pay in lieu of Long Service Leave Benefit under any other provision of these Rules;

- (b) the Working Sub-Contractor or registered Worker has paid Long Service Leave Charges under Part 5; and
- (c) the Working Sub-Contractor or registered Worker has ceased to be employed in the Construction Industry because of illness incapacity or domestic or other pressing necessity,

the Trustee shall pay from the Fund to the Working Sub-Contractor or registered Worker a refund of his contributions together with interest at the determined rate

32.2 Where on the application of the personal representative of a Working Sub-Contractor or a Worker who is registered under **rule 10** and who has been a Working Sub-Contractor in the Construction Industry the Trustee is satisfied that:

- (a) the Working Sub-Contractor or registered Worker is deceased;
- (b) the deceased Working Sub-Contractor or registered Worker has paid Long Service Leave Charges under Part 5; and
- (c) his estate is not entitled to any payment from the Fund under any other provision of these Rules,

the Trustee shall pay from the Fund to the personal representative a refund of the contributions paid by the deceased together with interest at the determined rate.

32.3 Where on the application of a Working Sub-Contractor the Trustee is satisfied that the Working Sub-Contractor has ceased to be engaged in the Construction Industry for a reason other than one of the reasons specified in **rule 33.1(c)**, the Trustee shall pay from the Fund a refund of his contributions.

32.4 Where a Working Sub-Contractor has not paid Long Service Leave Charges under Part 5 of these Rules for a continuous period of two years he shall be deemed to have ceased to be engaged in the Construction Industry and there shall be payable from the Fund a refund of his contributions.

33 DETERMINATION OF ENTITLEMENT IN CERTAIN CASES

Notwithstanding anything to the contrary in **rules 27, 30 and 31**, for the purpose of determining the amount of Long Service Leave Benefit to which a Worker or a Worker's personal representative is entitled in respect of any service in the Construction Industry beginning before 1 January 1965 and ending after that date, so much of the service in the Construction Industry as was completed before that date shall be reduced by one-quarter.

34 RECIPROCAL ARRANGEMENTS

34.1 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 Corresponding Law.

34.2 A reciprocal arrangement ('**Reciprocal Arrangement**') may relate to Long Service Leave Benefits, the exchange of information about service credits and entitlements to benefits or payments between the Trustee and any equivalent authority established under or subject to

Corresponding Law and any other matters relating to Long Service Leave Benefits or other payments which the Minister thinks are necessary or convenient.

- 34.3 If a person has been paid a Long Service Leave Benefit by an equivalent authority and the Minister has entered into a Reciprocal Arrangement with the Minister responsible for administering the equivalent authority and the payment is either wholly or partly in respect of a period of service in the Construction Industry in Victoria the Trustee must pay to the equivalent authority the Prescribed Amount.
- 34.4 For the purposes of **rule 34.3** the 'Prescribed Amount' is an amount equal to the amount that bears the same proportion to the amount paid to the person as the period of service in the Construction Industry in Victoria bears to the total period of service in respect of which the payment was made.
- 34.5 The repayment by the Trustee is subject to any terms and conditions which are specified in the Reciprocal Arrangement.
- 34.6 If a Reciprocal Arrangement has been or is from time to time 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.
- 34.7 The Trustee must comply with all directions given by the Minister from time to time relating to Reciprocal Arrangements.

35 PAYMENT OF LONG SERVICE LEAVE BENEFIT

- 35.1 When a Worker (including a Worker who has been a Working Sub-Contractor) becomes entitled to Long Service Leave Benefit under these Rules, Long Service Leave shall be granted by his Employer as soon as practicable having regard to the needs of his establishment, but subject to these Rules:
 - (a) the taking of the leave may be postponed to such date as is mutually agreed or, in default of agreement, as the Trustee having regard to the problems involved directs, but no such direction shall require Long Service Leave to commence before the expiry of six months after the date of the direction; and
 - (b) in no case shall any entitlement to Long Service Leave be lost or in any way affected by the foregoing provisions of this **rule 35.1** or by failure or refusal of the Employer to grant the leave.
- 35.2 If an Employer and a Worker so agree:
 - (a) the first Long Service Leave to which the Worker becomes entitled may be taken in two or three separate periods; and
 - (b) any subsequent period of Long Service Leave to which the Worker becomes entitled may be taken in two separate periods,

but save as aforesaid Long Service Leave shall be taken in one period.
- 35.3 The Long Service Leave Benefit of a Worker on Long Service Leave must be paid to him from the Fund when the leave is taken and must be paid in one of the following ways:

- (a) in full when the Worker commences his leave;
- (b) at the same times as those at which he would have been paid his Ordinary Pay if the Worker were still on duty (in which case payment shall, if the Worker in writing so requires, be made by cheque posted to a specified address); or
- (c) in any other way agreed between the Employer and the Worker.

35.4 Where a Worker who is on Long Service Leave:

- (a) has been paid in full on the commencement of his leave pursuant to **rule 35.3(a)**; or
- (b) has been paid in advance with respect to any period of the leave,

and his Ordinary Pay increases during the period of the leave, then, subject to these Rules, he shall be entitled to be paid Long Service Leave Benefit at the increased rate as at the time of the increase and upon application to the Trustee the Trustee shall forthwith pay to him from the Fund the difference on this return to work.

- 35.5 Any Long Service Leave shall be inclusive of any public holiday occurring during the period when the leave is taken, but shall not be inclusive of any annual leave occurring during the period.

36 AGREEMENT IN RESPECT OF ONLY TEN YEARS OF CONTINUOUS SERVICE

- 36.1 An Employer may by agreement with a Worker grant Long Service Leave on the completion by the Worker of ten years of Continuous Service in the Construction Industry before the entitlement to that leave has accrued.

- 36.2 Where Long Service Leave referred to in **rule 36.1** (in this **rule 36.2** called 'leave in advance') is granted and taken it shall not exceed such amount of Long Service Leave as equals one-sixtieth part of the period of his Continuous Service in the Construction Industry and, the Worker shall not be entitled to further leave or to payment in lieu of Long Service Leave for the period of Continuous Service in respect of which the leave was taken before the entitlement accrued.

- 36.3 Where the employment of a Worker who has taken leave in advance is subsequently terminated, the Employer may, from whatever remuneration is payable to the Worker upon that termination, deduct and withhold a payment equivalent to the amount paid by him to the Worker in respect of leave in advance.

37 LEAVE IN ADVANCE FOR WORKING SUB-CONTRACTORS

- 37.1 A Working Sub-Contractor who has not terminated service in the Construction Industry may take his Long Service Leave Benefit after ten years of Continuous Service in the Construction Industry before the entitlement to that Long Service Leave Benefit has accrued.

- 37.2 A Working Sub-Contractor who has had Continuous Service in the Construction Industry as a Working Sub-Contractor who takes his Long Service Leave Benefit under **rule 37.1** is

to receive a refund of the Working Sub-Contractor's total contributions for the relevant period together with interest at the determined rate.

37.3 A Working Sub-Contractor who has had Continuous Service in the Construction Industry partly as a Worker and partly as a Working Sub-Contractor who takes his Long Service Leave Benefit under **rule 37.1** is to receive:

- (a) an amount equal to one-sixtieth part of the Working Sub-Contractor's period of Continuous Service as a Worker; and
- (b) a refund of the Working Sub-Contractor's total contributions together with interest at the determined rate for the Working Sub-Contractor's period of Continuous Service as a Working Sub-Contractor.

37.4 A Working Sub-Contractor who takes Long Service Leave under **rule 37.1** is not entitled to further Long Service Leave Benefit or payment in lieu of Long Service Leave Benefit for the period of Continuous Service in respect of which leave was taken under **rule 37.1**.

38 PAYMENT FROM FUND IN RESPECT OF LEAVE

38.1 Notwithstanding anything to the contrary in these Rules, no payment shall be made from the Fund in relation to any entitlement of a Worker or his personal representative under these Rules which is by these Rules deemed to have accrued before 21 December 1973, but nothing in this **rule 38.1** shall affect the liability of the Employer to grant any such leave not taken or make any payment not made (as the case may be).

38.2 Any payment in respect of Long Service Leave or in lieu of Long Service Leave that accrues or is by these Rules deemed to have accrued under these Rules in respect of Building Trades Work on or after 1 December 1973 and before the Effective Date shall be made from the Fund.

38.3 If an Employer makes any payment (whether before or after the commencement of this **rule 38.3**) in respect of Long Service Leave Benefit or in lieu of Long Service Leave Benefit that accrues or is by these Rules deemed to have accrued under these Rules on or after 1 January 1973 and before the Effective Date (being a payment which by these Rules is authorised to be made from the Fund) he shall be entitled to be reimbursed from the Fund to the extent thereof.

38.4 Where on or after 1 January 1974 and before 1 February 1977, any person is given Long Service Leave Benefit or any payment in lieu of Long Service Leave Benefits in advance of the accrual of his entitlement to such benefits and subsequently he completes such service in the Construction Industry as would have entitled him to such leave or payment at a later date, any payment made by an Employer in respect of the leave or in lieu of the leave shall be deemed to have to be in respect of leave that accrued on or after 21 December 1973 and before the Effective Date.

38.5 Any Long Service Leave Benefit or payment in lieu of Long Service Leave Benefit referred to in **rule 38.4** shall be deemed to be leave taken or payment made under these Rules.

38.6 Where:

- (a) after 21 December 1973 and before 1 February 1977 any person employed to perform Building Trades Work is given Long Service Leave or any payment in lieu of Long Service Leave to which he is entitled otherwise than under these Rules; and
- (b) the person was employed to perform Building Trades Work during the period of employment or any part of the period of employment giving rise to the entitlement (whether the person was so employed before or after 1 February 1977 and whether by the Employer who gives the leave or makes the payment or by any other person),

the Employer shall be entitled to be reimbursed from the Fund to the extent of such sum as bears the same relation to the whole sum due in respect of the Long Service Leave or in lieu of Long Service Leave (or if it appears to the Trustee that the sum is calculated in whole or in part by reference to work attracting higher remuneration than work of the kind performed by Workers, such lesser sum as is determined by the Trustee for the purposes of this **rule 38**) as the part of the period of employment giving rise to the entitlement during which the Worker was employed to perform Building Trades Work bears to the whole period of employment giving rise to the entitlement.

38.7 Notwithstanding the preceding provisions of this **rule 38**, an Employer is not entitled to be reimbursed from the Fund to the extent of any payment in respect of Long Service Leave which accrued or is deemed to have accrued to a Worker:

- (a) in respect of employment 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 employment before that date; or
- (b) engaged in shopfitting work in respect of employment before 1 March 1982 where the provisions of the Carpenters and Joiners (Long Service Leave) Award applied to that employment before that date,

but nothing in this **rule 38.7** shall affect the liability of the Employer to grant any such leave not taken or make any payment not made in lieu thereof (as the case may be).

39 PAYMENT FROM FUND IN RESPECT OF LEAVE ACCRUED UNDER FORMER FUND

39.1 Notwithstanding anything to the contrary in these Rules, no payment shall be made from the Fund in relation to any entitlement which is by these Rules deemed to have accrued before the Effective Date where an equivalent entitlement accrued under and an equivalent payment was made from the Former Fund but nothing in this **rule 39.1** shall affect:

- (a) the liability of the Employer to grant such leave not taken or to make any payment not made (as the case may be); or
- (b) the liability of the Trustee to make any payment from the Fund in respect of an entitlement which accrued prior to the Effective Date but for which no payment was made from the Former Fund.

39.2 Notwithstanding anything to the contrary in these Rules, no payment shall be made from the Fund to reimburse an Employer in respect of any payment made before the Effective Date to any person in respect of Long Service Leave in advance of the accrual of his entitlement to those benefits, whether or not that person subsequently completes such service in the Construction Industry as would have entitled him to that leave or payment at a later date.

39.3 Notwithstanding anything to the contrary in these Rules, where:

- (a) a Worker has completed 15 years' Continuous Service in the Construction Industry before the Effective Date;
- (b) he is not entitled to Long Service Leave in respect of that service otherwise than under this **rule 39**;
- (c) his entitlement under these Rules is deemed to have accrued before the Effective Date; and
- (d) the Employer is not liable to grant the Long Service Leave or to make any payment in lieu thereof,

payment may be made to the Worker or his personal representative from the Fund in relation to that entitlement.

40 FURTHER PROVISIONS FOR PAYMENTS IN RESPECT OF LONG SERVICE LEAVE

40.1 Any payment in respect of Long Service Leave or in lieu of Long Service Leave that accrues or is by these Rules deemed to have accrued under these Rules on or after the Effective Date shall be made from the Fund.

40.2 If an Employer makes any payment on or after the Effective Date in respect of Long Service Leave or in lieu of Long Service Leave that accrues or is by these Rules deemed to have accrued under these Rules on or after the Effective Date (being a payment which by these Rules is authorized to be made from the Fund) he shall be entitled to be reimbursed from the Fund to the extent thereof.

40.3 Where:

- (a) any person is given Long Service Leave or any payment in lieu of Long Service Leave to which he is entitled otherwise than under these Rules; and
- (b) the Employer who gives the leave or 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 in accordance with these Rules in respect of any part of the period of employment giving rise to the entitlement,

the Employer shall be entitled to be reimbursed from the Fund to the extent of such sum as bears the same relation to the whole sum in respect of Long Service Leave or in lieu of Long Service Leave (or, if it appears to the Trustee that that sum is calculated in whole or in part by reference to work attracting higher remuneration than work of the kind performed by Workers, such lesser sum as is determined by the Trustee for the purposes of this **rule 40**) as the part of the period of employment in respect of which Long Service

Leave Charges were paid by the Employer or any person so employing the Worker bears to the whole period of employment giving rise to the entitlement.

- 40.4 The Trustee is not required to make a reimbursement under this **rule 40** unless the Employer makes an application for that reimbursement within seven years of the making of the payment for which the Employer is entitled to be reimbursed.

PART 7 - PROVISION OF INFORMATION TO TRUSTEE

41 LONG SERVICE LEAVE RETURNS

41.1 Long Service Leave Returns

Every Employer who has during a Prescribed Period employed a Worker to perform Construction Work must, after the last Pay Day in that period and within 14 days after the end of that period, deliver or cause to be delivered to the Trustee a return showing the following information:

- (a) with respect to every Worker employed to perform Construction Work during that period:
 - (i) the Worker's name and registration number (if any); and
 - (ii) the amount of ordinary pay received by the Worker during that period; and
 - (iii) the period of the Worker's continuous service in the Construction Industry during the period commencing with the day following the last Pay Day in the period preceding the period to which the return relates and ending with the last Pay Day in the period to which the return relates; and
 - (iv) the period of, and reasons for, any absence or interruption of any kind mentioned in **rule 21.1** during the period commencing with the day following the last Pay Day in the period preceding the period to which the return relates and ending with the last Pay Day in the period to which the return relates; and
- (b) the total amount of Long Service Leave Charges payable by the Employer in respect of Workers employed to perform Construction Work during that period; and
- (c) in the case of a Worker who commenced employment during that period, the name of that Worker and the date of commencement of employment; and
- (d) in the case of an apprentice who has completed his or her apprenticeship during that period, the date of that completion; and
- (e) with respect to every Worker who ceased employment during that period:
 - (i) the Worker's name and Registration Number (if any); and

- (ii) the date of cessation of employment; and
- (iii) the amount of annual leave to which the Worker was entitled but which the Worker has not taken; and
- (iv) the amount paid to the Worker in respect of annual leave not taken.

41.2 Return where no Construction Worker employed

An Employer or a person who has not during a Prescribed Period employed any Worker to perform Construction Work must, if required by the Trustee, deliver or cause to be delivered to the Trustee a return to that effect within 14 days of being required to do so.

42 TRUSTEE MAY REQUIRE INFORMATION

- 42.1 The Trustee may by notice in writing require any person to give all that information including any books documents or papers under that person's control to the Trustee which will enable the Trustee to ascertain that person's or any other person's liability to pay Long Service Leave Charges or entitlement to Long Service Leave Benefits under these Rules.
- 42.2 A notice under **rule 42.1** must specify the time (being not less than 28 days) and place at which the required information must be produced.
- 42.3 A person required to give that information:
 - (a) must do so in the specified time or in any further period allowed by the Trustee;
 - (b) must give that information that it is within that person's power to give; and
 - (c) must not give any information which is to that person's knowledge false in any material particular.
- 42.4 Information disclosed to the Trustee by any Worker, Working Sub-Contractor or Employer will be treated as confidential and will not be used or disclosed by the Trustee except for the purposes of these Rules, without the prior written consent of the person who disclosed that information to the Trustee. This rule **42.2** does not apply to information which the Trustee is required by law to disclose, or information which is public knowledge.

43 EMPLOYER REQUIRED TO KEEP CERTAIN RECORDS

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

- (a) the Worker's name, address and Registration Number (if any); and
- (b) the number of working days for which the Worker was engaged on Construction Work; and
- (c) the period of any absence or interruption of a kind mentioned in **rule 22**; and
- (d) the date of the Worker's commencement and termination of employment; and
- (e) the total amount of remuneration received by the Worker; and

- (f) the amount paid in respect of annual leave not taken when the Worker's employment was terminated.

44 REGISTRATION CARDS

The Trustee may issue a registration card which contains a Registration Number:

- (a) to each Worker within 3 months after the Worker's name has been entered in the Register of Workers kept under **rule 10**; and
- (b) to each Working Sub-Contractor within 3 months after the Working Sub-Contractor's name has been entered in the Register of Working Sub-Contractors kept under **rule 9**.

PART 8 - GENERAL

45 MEANING OF CONSTRUCTION WORK

45.1 Trustee may determine

Subject to **Rules 16 and 45.4**, the Trustee may by Ordinary Resolution of its Directors make a decision:

- (a) that any specified work is or is not Construction Work;
- (b) that any Construction Work is Building Trades Work, Electrical Trades Work or Metal Trades Work;
- (c) that a person is or is not an Employer engaged in the Construction Industry;
- (d) that a person is or is not a Working Sub-Contractor engaged in the Construction Industry;
- (e) that a person is or is not a Worker employed in the Construction Industry; or
- (f) otherwise concerning a person's obligations or entitlements under these Rules (included obligations or entitlements under these Rules arising by virtue of the Act).

45.2 Trustee may determine on own motion or on application

Subject to **Rule 45.4**, the Trustee may make a decision under **rule 45.1** either of its own motion or upon the application of a Worker, Working Sub-Contractor or Employer, or a person on behalf of a Worker, Working Sub-Contractor or Employer.

45.3 Prescribed Form

An application for a decision by the Trustee under **paragraphs (a), (b), (c), (d) or (e) of rule 45.1** must be in the form of **Form 1** to these Rules, or in such other form as may be approved by the Trustee (by Ordinary Resolution of its Directors) for the purposes of this **rule 45**.

45.4 Trustee to give reasonable opportunity for hearing

The Trustee must not make the final decision under this **rule 45** unless it has provided each Worker, Working Sub-Contractor or Employer who the Trustee reasonably believes will be affected by that decision a reasonable opportunity to make written or verbal submissions. The Trustee may delegate to a Directors' Committee (established in accordance with Article 35 of the Articles of Association of the Trustee) the task of hearing any verbal submissions or considering any written submissions. This Directors' Committee will, after receiving and considering such submissions, report to the Board of Directors of the Trustee and make a recommendation to the Trustee on the basis of the submissions it received. The Board of Directors will then make a final decision in relation to the issue and may, in making that final decision, act in accordance with the recommendation by the Directors' Committee, contrary to that recommendation or otherwise and will not be required to hear or receive submissions from any Worker, Working Sub-Contractor or Employer whom the Trustee has reason to believe will be affected by that decision.

45.5 Meaning of 'reasonable opportunity'

Without limiting the meaning of the expression 'reasonable opportunity', the Trustee will for the purpose of **rule 45.4** have provided a person a reasonable opportunity to make submissions in respect of a final decision under this **rule 45** where the Trustee:

- (a) notifies the person of the nature of the decision which the Trustee has decided (or has been requested) to make, and invites the person to make written submissions to the Trustee in relation to the decision;
- (b) provides the person with details of the time and place of the Directors' meeting at which the Trustee will make the decision, and
- (c) informs the person of that person's right to make written and verbal submissions,

not less than 14 days prior to the Directors' meeting at which the Trustee proposes to make that decision.

45.6 Notice of decisions

The Trustee.

- (a) must within 14 days of making a decision under this **rule 45**, notify each person in respect of whom the decision is made and each person who made a submission to the Trustee in relation to the decision, of the Trustee's decision by notice in writing setting out the terms of the decision and stating that the person may within 65 days of the date that the notice was posted by the Trustee, send by post or lodge with the Trustee an objection in writing against the decision stating fully and in detail the grounds on which he relies; and
- (b) must make known its decision under this **rule 45**, in any one or more of the following ways which in any particular case the Trustee considers appropriate:
 - (i) by publication in a daily newspaper circulating generally in Victoria;
 - (ii) by publication in a trade or industry journal; or

- (iii) by notification to any Worker's organisation, Working Sub-Contractor's organisation or Employer's organisation which the Trustee reasonably believes is likely to be interested in that decision.

45.7 Decision of Trustee not invalidated

A decision by the Trustee under this **rule 45** will not be invalidated because the Trustee has failed to comply with **rule 45.5 or 45.6** in respect of every Worker, Working Sub-Contractor or Employer affected by that decision, provided that the Trustee substantially complied with **rule 45.5** in relation to those Workers, Working Sub-Contractors or Employers whom the Trustee ought reasonably to have been aware would be affected by the decision.

45.8 Date Persons notified

- (a) Each person to whom the Trustee issues a notice under **rule 45.6(a)** is deemed to have been notified of the Trustee's decision on the 5th Business Day after the notice was posted by the Trustee.
- (b) Every Worker, Working Sub-Contractor and Employer (other than a person described in **rule 45.6(a)**) is deemed to have been notified of a decision by the Trustee under **rule 45** on the 5th day after the Trustee publishes in a daily newspaper circulating generally in Victoria a notice setting out the terms of the decision and stating that any Worker, Working Sub-Contractor or Employer who is registered with the Trustee under Part 4 of these Rules may within 65 days of the date of publication of that notice send by post or lodge with the Trustee an objection in writing against the decision stating fully and in detail the grounds on which he relies.

46 OBJECTIONS

46.1 Persons may object

A Worker, Working Sub-Contractor or Employer who is dissatisfied with any decision made by the Trustee under **rule 45** may, within 60 days of being notified under **rule 45** of the Trustee's decision, send by post or lodge with the Trustee an objection in writing against the decision stating fully and in detail the grounds on which he relies.

46.2 Trustee to consider objections

The Trustee must consider an objection received under this **rule 46** and may either disallow or allow it either wholly or in part, and must serve the person who lodged the objection by post or otherwise with written notice of the Trustee's decision within 14 days of the Trustee making that decision.

46.3 Arbitration

If a person ('**Objector**') who has lodged an objection with the Trustee under **Rule 46.1** is dissatisfied with the decision of the Trustee on the objection, the Objector may require the Trustee to submit the dispute to arbitration as follows:

- (a) the Objector shall serve a written notice on the Trustee, within 28 days after notice of the Trustee's decision, requiring the appointment of an arbitrator;

- (b) the arbitrator shall be a person agreed to by the Objector and Trustee or, failing agreement within 14 days from service of the notice requiring arbitration, shall be a person nominated by the Secretary-General of the Australian Centre for International Commercial Arbitration;
- (c) the arbitration must be conducted in accordance with and subject to the provisions of the *Commercial Arbitration Act 1984*;
- (d) the fees and expenses of the arbitrator are to be borne jointly by the Objector and Trustee unless the arbitrator determines, in the circumstances, that one party should bear all or a large proportion of the fees and expenses; and
- (e) the Objector and the Trustee are to bear their own costs unless the arbitrator determines, in the circumstances, that one party should bear the costs, or part of the costs, of the other.

46.4 Notice of decisions

The Trustee must:

- (a) within 14 days of the arbitrator's making a decision under this **rule 46**, send to each person in respect of whom the decision is made and each person who made a submission to the arbitrator in relation to the decision, a notice in writing setting out the terms of the arbitrator's decision; and
- (b) make known the arbitrator's decision under this **rule 46**, in any one or more of the following ways which in any particular case the Trustee considers appropriate:
 - (i) by publication in a daily newspaper circulating generally in Victoria;
 - (ii) by publication in a trade or industry journal; or
 - (iii) by notification to any Worker's organisation, Working Sub-Contractor's organisation or Employer's organisation which the Trustee reasonably believes is likely to be interested in that decision.

47 KEEPING OF BOOKS AND RECORDS

An Employer must keep such books and records as may be Prescribed containing such particulars as may be Prescribed relating to Workers employed by him on Construction Work and must preserve each of those books and records for a period of seven years after the last entry was made in it.

48 CONTRACTING OUT PROHIBITED

For the purposes of these Rules, except as is otherwise expressly provided in these Rules, no contract or agreement made or entered into either before or after the commencement of these Rules will operate to annul, vary or exclude any of the provisions of these Rules.

49 RESTRICTION AS TO ENTITLEMENTS

Except as is otherwise expressly provided in these Rules, payment shall not be made from the Fund to a Worker or a Working Sub-Contractor or the personal representative of a

Worker or a Working Sub-Contractor in lieu of any Long Service Leave Benefit or part thereof to which the Worker or Working Sub-Contractor is entitled under these Rules.

50 REFUNDS

Where the Trustee finds in any case that Long Service Leave Charges have been overpaid, it may within seven years after the date of overpayment, refund to the person entitled thereto the amount of Long Service Leave Charges found to be overpaid.

Consolidation Copy for Reference Purposes

FORM 1

To: The Trustee
The Construction Industry Long Service Leave Fund

I _____ of _____
(Name) (Address)

apply under **rule 45** of the trust deed establishing the Construction Industry Long Service Leave Fund for a decision of the Trustee that the following work:

- * is/is not Construction Work
- * is/is not building trade work
- * is/is not metal or electrical trades work

My present status is that of:

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

The grounds on which a decision is sought are:

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 over which this application is sought;
- (4) Award under 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;
- (8) Description of places at which work is performed.

Additional information in support of the application (if any)

Signature of Applicant.....Date / /

* Strike out whichever is inapplicable.