

# RULES OF THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE FUND

AS AT 26 APRIL 2005

## 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*;

**1‘Allied Construction Industry’** means the industries of:

- <sup>2</sup>(a) carrying out Electrical Services;
- <sup>3</sup>(b) carrying out Concrete Testing Services;
- <sup>4</sup>(c) carrying out Shopfitting Services;
- <sup>5</sup>(d) carrying out Construction Yardmen Services;
- <sup>6</sup>(e) carrying out Parquetry Floor Laying Services;
- <sup>7</sup>(f) carrying out Landscape Gardening Services;
- <sup>8</sup>(g) carrying out Floor Covering Services;
- <sup>9</sup>(h) carrying out the installation, removal or relocation of, or maintenance or modification to, industrial or heavy machinery or equipment by:
  - (i) Workers performing work for their Employer in respect of services provided by their Employer to a third party; and /or
  - (ii) Working Sub-Contractors who provide such services to a third party;

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<sup>1</sup> Inserted by a Deed Poll sealed by the Trustee on 27 January 2004.

<sup>2</sup> Inserted by a Deed Poll sealed by the Trustee on 13 October 1998.

<sup>3</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>4</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>5</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>6</sup> Inserted by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>7</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>8</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>9</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

but does not include the carrying out of Domestic Works or work performed by Workers in the course of their employment other than in respect of services provided to a third party; and

<sup>10</sup>(i) carrying out Non-Destructive Testing Services;

<sup>11</sup>(j) carrying out Watering System Services;

**‘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 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 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;

<sup>10</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>11</sup> Inserted by a Deed Poll sealed by the Trustee on 26 April 2005.

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

<sup>12</sup>**‘Concrete Testing Services’** means the services undertaken:

- (a) in collecting and testing samples of pre-mixed concrete for the purposes of conducting simple routine repetitive testing such as hardness and fatigue tests, melting point determinations, pH readings or tests of the pass/fail type; and
- (b) in relation to the concrete used in the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any buildings or works of a kind referred to in paragraphs (a) or (b) of the definition of Construction Industry;

prior to practical completion of work as specified in the applicable contract governing the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to the particular buildings or works;

<sup>13</sup> <sup>14</sup><sup>15</sup>**‘Construction Industry’** means:

- (a) the Principal Construction Industry; and
- (b) the Allied Construction Industry;

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 industries described in this definition.

To avoid doubt, for the purposes of these Rules:

- (a) the Construction Industry is a single industry constituted by the Principal Construction Industry and the Allied Construction Industry; and
- (b) continuous service performing Construction Work in either or both of the Principal Construction Industry and the Allied Construction Industry is deemed to have occurred in the Construction Industry.

To avoid doubt, for the purposes of the Act:

- (a) the Construction Industry is a single industry constituted by the Principal Construction Industry and the Allied Construction Industry; and

<sup>12</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>13</sup> Amended by a Deed Poll sealed by the Trustee on 13 October 1998.

<sup>14</sup> Amended by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>15</sup> Amended by a Deed Poll sealed by the Trustee on 27 January 2004.

- (b) continuous service performing Construction Work in either or both of the Principal Construction Industry and the Allied Construction Industry is deemed to have occurred in the Construction Industry;

<sup>16</sup>**‘Construction Work’** means

- (a) Building Trades Work, Electrical Trades Work and Metal Trades Work; and
- (b) any other work performed by a Worker after 25 November 2003 in the service of a single Employer where that other work:
  - (i) is performed by the Worker for that single Employer in addition to, but does not constitute, Building Trades Work, Electrical Trades Work or Metal Trades Work; and
  - (ii) constitutes no more than 1/3<sup>rd</sup> of the total service of the Worker for that single Employer during a Prescribed Period.

<sup>17</sup>**‘Construction Yardmen Services’** means the services undertaken in storing, repairing, maintaining and loading scaffolding and parts therefor, either at or away from the site of the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any buildings or works of the kind referred to in paragraphs (a) or (b) of the definition of Construction Industry, where:

- (a) such scaffolding and parts therefor are used at such a site; and
- (b) the carrying out of such services is by Workers for an Employer who is engaged substantially in:
  - (1) the industry of providing scaffolding for use in;
  - (2) the industry of carrying out;

the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any buildings or works of the kind referred to in paragraphs (a) or (b) of the definition of Construction Industry;

**‘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;

<sup>16</sup> Definition replaced by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>17</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

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

**‘Director’** means a director of the Trustee;

<sup>18</sup>**‘Domestic Works’** means any work performed on, at or in respect of a house including a multi-storey house, duplex, terrace house or strata-titled townhouse, and any work or works determined by the Board from time to time to be Domestic Works. Domestic Work does not include any work performed on, at or in respect of any one or more apartments, flats or units which are part of one building containing multiple such residences;

<sup>19</sup>**‘Effective Date’** means the day that section 20 of the Act comes into operation;

<sup>20</sup>**‘Electrical Services’** means:

- (a) the maintenance of electric power distribution lines and all associated work; and/or
- (b) the installation of electric light and power, all classes of assembly, wiring, repair and maintenance of electrical installations and appliances including, without in any way limiting the generality of the foregoing, the assembling, installing, diagnosing, servicing and rectifying of faults in any of the following:
  - (i) electronic products (eg. television receivers, video cassette recorders, audio equipment/systems, home computers) and any combination of these products together with ancillary devices and/or equipment;
  - (ii) radio and television transmitting devices (including LF, HF, VHF and UHF) and CB radios;
  - (iii) telemetry systems and ancillary equipment;
  - (iv) multiple access television distribution systems;
  - (v) computers and their peripherals;
  - (vi) microwave and associated equipment;
  - (vii) electrically operated refrigeration and air conditioning equipment;
  - (viii) telephone communications devices;
  - (ix) fibre optic transmission lines and associated equipment;
  - (x) public address systems;
  - (xi) domestic satellite television receivers;
  - (xii) maritime electronic equipment (including depth sounders, radars);

<sup>18</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>19</sup> Amended by a Deed Poll sealed by the Trustee on 13 May 1997.

<sup>20</sup> Inserted by a Deed Poll sealed by the Trustee on 13 October 1998.

- (xiii) security alarm systems;
- (xiv) fire alarm systems;
- (xv) superconductivity systems and associated equipment; and
- (xvi) electromagnetic devices;

by Workers for Employers and/or by Working Sub-Contractors who contract to provide such services for which a rate of pay is prescribed under the Electrical Contracting Industry Award;

**‘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;

<sup>21</sup>**‘Floor Covering Services’** means the preparing, levelling, sealing, laying or installing coverings to floors by a Worker for an Employer that supplies those services to third parties under a contract for services. For the avoidance of doubt, Floor Covering Services

<sup>21</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

include (but are not limited to) the carrying out of vinyl or linoleum installation to floors and walls, vinyl tile installation, vinyl planking installation, carpet laying, carpet tile laying, and the sanding, polishing or lacquering of floor coverings but do not include:

- (a) carpet cleaning, sanding, polishing, lacquering or cleaning of floor coverings by a Worker who does not also perform the preparing, levelling, sealing, laying or installation of coverings to floors for the same Employer; or
- (b) the carrying out of Domestic Works;

**‘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;

<sup>22</sup>**‘industrial or heavy machinery or equipment’** means any plant, equipment or mechanical apparatus or part of a mechanical apparatus used to perform a function or process in the course of manufacturing or processing goods or materials or providing goods, materials or services to a wholesaler, manufacturer, corporation, retailer or consumer;<sup>23</sup>**‘installation, removal or relocation of, or maintenance or modification to, industrial or heavy machinery or equipment’** means:

- (a) placing, removing, relocating, fixing or fastening industrial or heavy machinery in position for use; or
- (b) commissioning of industrial or heavy machinery; or
- (c) repairing, upgrading, maintaining or modifying industrial or heavy machinery to ensure its continued satisfactory and safe operation;

and which is Metal Trades Work;

<sup>24</sup>**‘Landscape Gardening Services’** means the construction, creation, installation, maintenance or repair of landscapes, including water features, rockeries, land contouring, pergolas, gazebos, deckings, pathways and walkways, paving, retaining walls, garden or landscape lighting systems, laying of turf, planting of live plants (including but not limited to trees, shrubs, bushes, hedges, flowering plants or grasses), and the levelling and earth building of gardens but does not include:

- (a) the mowing of turf or lawns, the weeding, watering or maintenance of turf, lawns or garden beds, the watering or pruning of trees, shrubs, bushes, hedge or flowering plants, or otherwise maintaining live plants, including but not limited to trees, shrubs, bushes, hedges, flowering plants or grasses; or
- (b) the carrying out of Domestic Works;

<sup>22</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>23</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>24</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

**‘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;

<sup>25</sup>**‘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 involves the manufacture of any structures, fixtures, fittings, chattels or works which are not manufactured specifically for a particular building or a particular work of the kind referred to in paragraph (a) of the definition of Construction Industry. For the avoidance of doubt:

- (c) any manufacture of structures, fixtures, fittings, chattels or works in a permanently established factory or workshop is excluded from this definition of Metal Trades Work;
- (d) any manufacture of structures, fixtures, fittings, chattels or works in a temporarily established factory or workshop, where those structures, fixtures, fittings or works are manufactured specifically for a particular building or a particular work, is included in this definition of Metal Trades Work; and
- (e) any mass manufacturer of structures, fixtures, fittings, chattels or works is excluded from this definition of Metal Trades Work;

**‘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;

<sup>25</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>26</sup>**‘Non-Destructive Testing Services’** means services:

- (a) for the investigation of the material integrity of a metal work, structure or object that do not impair the future usefulness or are not deleterious to the physical state of, that metal work, structure or object; and
- (b) are performed by a Worker for an Employer who supplies those services to a third party under a contract for services at a site not ordinarily occupied by the Employer.

Without limiting the definition above, Non-Destructive Testing Services may include testing by visual examination, radiography, ultrasound, magnetic particle crack detection, endoscopy or other method of non destructive testing as determined from time to time by the National Association of Testing Authorities, Australia. To avoid doubt, Non-Destructive Testing Services do not include:

- (c) any services for the testing of metal works, structures or objects that occur at a site ordinarily occupied by the Employer; or
- (d) mechanical testing whether on site or not except where mechanical testing is performed by a Worker in the course of testing the material integrity of a metal work, structure or object within the meaning of subparagraphs (a) and (b) above;

<sup>27</sup>**‘Register of Non-Voting Persons’** means the register or sub-registers of Non-Voting Persons kept by the Trustee in accordance with **rule 10D**;

<sup>28</sup>**‘Non-Voting Person’** means at any time an Employer, Worker or Working Sub-Contractor who at that time holds a certificate under **rule 10A** declaring that person to be a ‘Non-Voting Person’, which certificate had not expired or been revoked by the Trustee;

**‘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;

<sup>29</sup>**‘Parquetry Floor Laying Services’** means the levelling, sealing and laying of floors in connection with the installation, renovation or removal of parquetry flooring in the Construction Industry. Notwithstanding the definition of Construction Industry, Parquetry Floor Laying Services do not include the carrying out of sanding or polishing of parquetry floors by workers who do not also perform the levelling, sealing and laying of parquetry floors for the same Employer;

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

<sup>26</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>27</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>28</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>29</sup> Inserted by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>30</sup>**‘Prescribed’** means, subject to the Act (including without limitation section 7 of the Act), prescribed by a Special Resolution of the Board;

<sup>31</sup>**‘Prescribed Amount’** has the meaning given in **rule 34.4**;

**‘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:

| <b>Award or Agreement</b>                                                               | <b>Extent of Prescription</b>                                                                                                                                |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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                                                                                                                                                   |
| <sup>32</sup> <i>Construction Industry Sector-Minimum Wage Order –Victoria 1997</i>     | <sup>33</sup> Clause 4.5.1 Landscaping Services                                                                                                              |
| <sup>34</sup> <i>Furnishing Industry National Award 1999</i>                            | <sup>36</sup> Clauses 21.1.10 and 21.1.11: insofar as they relate to the carrying out of Parquetry Floor Laying Services and Floor Covering Services on site |
| <i>National Building and Construction Industry Award 1990</i>                           | The whole except for work described in clause 38 (32)                                                                                                        |
| <sup>37</sup> <i>Scientific and Technical Workers Award 1987</i>                        | Part I                                                                                                                                                       |
| <i>Sprinkler Pipe Fitters Award 1975</i>                                                | The whole                                                                                                                                                    |
| <i>The Plumbing Trades (Southern States) Construction Agreement</i>                     | The whole                                                                                                                                                    |
| <i>The Prefabricated Building (Off-Site)</i>                                            | The whole                                                                                                                                                    |

<sup>30</sup> Amended by a Deed Poll sealed by the Trustee on 13 May 1997.

<sup>31</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>32</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>33</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>34</sup> Inserted by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>36</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>37</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

**Award or Agreement****Extent of Prescription**

*Award 1978*

**‘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 Firemens’) 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**

<sup>39</sup>*Metal, Engineering and Associated Industries Award 1998*

<sup>40</sup>Clause 1.4.7(b) of Part I and Part II insofar as that clause and part apply to non destructive testing for classifications C5 to C14

<sup>39</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

<sup>40</sup> Inserted by a Deed Poll sealed by the Trustee on 2 March 2004.

**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**;<sup>41</sup>**‘Principal Construction Industry’** means the industry of:

- (a) 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;

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<sup>41</sup> Inserted by a Deed Poll sealed by the Trustee on 27 January 2004.

- (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);
- (b) 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;

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

<sup>42</sup>**‘Records’** means the records maintained by the Trustee of the Continuous Service in the Construction Industry of Workers and Working Sub-Contractors;

**‘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 Sub-Contractors performing Construction Work in the Construction Industry allocated to the Trustee under the Act, kept in accordance with **rule 9**;

<sup>43</sup>**‘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**;

<sup>44</sup>**‘Shopfitting Services’** means the services of manufacturing, altering and/or repairing shopfronts, showcases, partitions involving wrap around glazing, partitions (including the insertion of glass panels where the glass is 6.35 millimetres or less in thickness, by beads or moulds or other dry glazing methods), exhibitor’s stands and interior fixtures and fittings in or on buildings (other than small carpentry repair and renovation work carried out by a carpenter or joiner employed by an Employer who is not engaged substantially in the industry of providing the services described in this definition), irrespective of whether such manufacturing, altering or repair work occurs at the site of the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any buildings;

<sup>42</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>43</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>44</sup> Inserted by a Deed Poll dated 7 December 1999.

**‘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;

<sup>45</sup>**‘Watering System Services’** means the installation, repair and maintenance of reticulated watering systems for the sustenance of plants, including but not limited to trees, shrubs, bushes, hedges, flowering plants or grasses. Without limiting the foregoing Watering System Services include:

- (a) the installation of equipment ancillary to the operation of any articulated watering system; and
- (b) the commissioning of a reticulated watering system

but does not include:

- (c) work carried out for viticulture, horticulture (any nursery or commercial crop/plant production) or agriculture; or
- (d) the carrying out of Domestic Works.’

**‘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

<sup>45</sup> Inserted by a Deed Poll sealed by the Trustee on 26 April 2005

- (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 <sup>46</sup>OVERRIDING RULE ONCE THE ACT COMES INTO FORCE

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

- (i) this **rule 4**;
- (ii) the meanings given to 'Prescribed' and 'Special Resolution' as respectively defined in **rule 1.1**; or
- (iii) the meaning given to any or all terms defined in **rule 1.1** (including by reference to any other Rules) to the extent that they are used in any or all of the provisions of these Rules specified in paragraph (i) or (ii) above;

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

- (b) each referendum under this **rule 4** must be conducted by the Trustee under the supervision of and in accordance with guidelines approved by either the Victorian State Electoral Office or the Australian Electoral Commission;

<sup>46</sup> Amended by a Deed Poll sealed by the Trustee on 13 May 1997 and amended by a Deed Poll sealed by the Trustee on 11 November 1997.

- (c) a Special Resolution will be approved pursuant to a referendum for the purposes of this **rule 4** only if more than:
- (i) 50% of all Workers;
  - (ii) 50% of all Employers; and
  - (iii) 50% of all Working Sub-Contractors;
- other than Non-Voting Persons who:
- (iv) 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
  - (v) voted at that referendum;
- voted in favour of the Special Resolution;
- (d) <sup>47</sup>for the avoidance of doubt, nothing in this **rule 4** requires a Special Resolution to be approved in accordance with the referendum procedure prescribed in this **rule 4** if the Special Resolution relates to the exercise by the Trustee of any power, authority or discretion given to the Trustee under the Trust Deed, the exercise of which:
- (i) would have the effect of enlarging the class of persons capable of being paid benefits out of the Fund; and
  - (ii) has been approved by the Governor-in-Council pursuant to section 7 of the Act.

## 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

<sup>47</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (c) any other money paid into the Fund under these Rules.

6.2 <sup>48</sup>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
- (ba) any moneys which the Trustee reasonably believes should in all circumstances be paid from the Fund, including (without limitation) situations where:
  - (i) contributions made by Employers or Working Sub-Contractors are to be refunded (together with interest) for whatever reason; and
  - (ii) the Trustee has determined that although an entitlement to Long Service Leave does not exist, money from the Fund should be paid to a Worker or Working Sub-Contractor on the merits of the case or in order to preserve the Fund;
- (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

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<sup>48</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

- 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 <sup>49</sup>The Trustee may remove from the Register of Workers the name of any Worker who ceases to perform Construction Work.

## **<sup>50</sup>PART 4A – NON-VOTING PERSONS**

### **10A. <sup>51</sup>Non-Voting Persons**

- 10A.1 An Employer, Worker or Working Sub-Contractor who is a natural person and who on application to the Board satisfies the Trustee that the person's conscientious beliefs do not allow that person to be a member of an association of the kind established by the Trust Deed (including under these Rules) may be issued by the Trustee a certificate declaring that person to be a Non-Voting Person.
- 10A.2 If an Employer, Worker or Working Sub-Contractor provides to the Trustee a current certificate issued under section 267 of the *Workplace Relations Act 1996* (Commonwealth) in favour of that Employer, Worker or Working Sub-Contractor, then the Trustee must issue a certificate to the effect that the person is a Non-Voting Person.
- 10A.3 In this **rule 10A 'conscientious beliefs'** means any conscientious beliefs, whether the grounds for the beliefs are or are not of a religious character and whether the beliefs are or are not part of the doctrine of any religion.
- 10A.5 <sup>52</sup>An application by an Employer, Worker or Working Sub-Contractor must be made in accordance with **rule 45**.
- 10A.6 No fee may be charged by the Trustee for issuing a certificate under this **rule 10A**.

### **10B. <sup>53</sup>PRESERVATION OF CERTAIN ENTITLEMENTS, RIGHTS AND OBLIGATIONS**

<sup>49</sup> Amended by a Deed Poll sealed by the Trustee on 13 May 1997.

<sup>50</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>51</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>52</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- 10B.1 The entitlements, rights and obligations of a Worker under Parts 6, 7 and 8 of these Rules are not affected by that Worker becoming, or ceasing to be, a Non-Voting Person.
- 10B.2 The entitlements, rights and obligations of a Working Sub-Contractor under Parts 5, 6, 7 and 8 of these Rules are not affected by that Working Sub-Contractor becoming, or ceasing to be, a Non-Voting Person.
- 10B.3 These entitlements, rights and obligations of an Employer under Parts 5, 6, 7 and 8 of these Rules are not affected by that Employer becoming, or ceasing to be, a Non-Voting Person.

**10C. <sup>54</sup>CEASING TO BE A NON-VOTING PERSON**

10C.1 A certificate issued under **Rule 10A** to the effect that a person is a Non-Voting Person is valid from the date of issue by the Trustee for such period (if any) as Prescribed by the Trustee.

10C.2 <sup>55</sup>Where:

- (a) the Trustee becomes aware of a matter that was not known to the Trustee when a certificate was issued to a person under **rule 10A**; and
- (b) if the Trustee had been aware of the matter when the application for the certificate was being considered the Trustee would not have issued the certificate;

the Trustee may, after giving the person an opportunity to show cause and otherwise acting in accordance with **rules 45 and 46**, revoke the certificate.

**10D. <sup>56</sup>REGISTER OF NON-VOTING PERSONS**

- 10D.1 The Trustee shall keep a Register of Non-Voting Persons.
- 10D.2 The Trustee must enter in the Register of Non-Voting Persons the name of every Employer, Worker and Working Sub-Contractor to whom the Trustee has issued a certificate to the effect that such person is a Non-Voting Person.
- 10D.3 The Trustee may remove from the Register of Non-Voting Persons the name of any Employer, Worker or Working Sub-Contractor who ceases to be a Non-Voting Person.
- 10D.4 The Trustee may keep the Register of Non-Voting Persons either separate to or as sub-registers of the Register of Employers, Register of Workers and the Register of Working Sub-Contractors kept under **rules 8, 9 and 10** respectively.

**10E. <sup>57</sup>NON-VOTING PERSON REGISTRATION CARD**

10E.1 The Trustee must issue a registration card which contains an exemption number:

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<sup>53</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>54</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>55</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>56</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

<sup>57</sup> Inserted by a Deed Poll sealed by the Trustee on 11 November 1997.

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

10E.2 <sup>58</sup>A Non-Voting Person is not entitled to a registration card issued under **rule 44** and must surrender any such registration card to the Trustee on demand by the Trustee.

Consolidation Copy for Reference Purposes

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<sup>58</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

## PART 5 - CONTRIBUTIONS

### 11 LONG SERVICE LEAVE CHARGE

#### 11.1 <sup>59</sup>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**) may 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 in respect of the Construction Work performed by a Worker or Working Sub-Contractor.

#### 11.2 <sup>60</sup>Amount of Long Service Leave Charge

- (a) By Special Resolution of the Trustee, a fixed Long Service Leave Charge per Worker per period may from time to time be established (**‘the Fixed Rate’**). While the Fixed Rate is in force by reason of a special Resolution of the Trustee, the amount of the Long Service Leave Charge shall be as specified by the Trustee by that Special Resolution, provided that:

- (i) where a Worker (not being an apprentice) is employed by an Employer to perform more than one kind of Construction Work during any Prescribed Period; or
- (ii) where during part or all of the Prescribed Period a Worker does not perform any Construction Work;

the Trustee may in its discretion determine whether the Fixed Rate is payable in respect of such a Worker or whether a part only of the Fixed Rate (whether based on the proportion of time the Worker spent performing Construction Work during the Prescribed Period or otherwise) is payable in respect of such a Worker.

- (b) Subject to **rule 11.2(a)**, at such times as the Trustee has not by Special Resolution determined that the Fixed Rate shall be the Long Service Leave Charge, the amount of the Long Service 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’**) in respect of:

- (i) <sup>61</sup>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

<sup>59</sup> Amended by Deed Polls sealed by the Trustee on 2 December 1997 and 25 November 2003.

<sup>60</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>61</sup> Amended by a Deed Poll sealed by the Trustee on 25 November 2003.

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 in respect of Construction Work performed if he had been paid at the minimum rate of pay prescribed in the Award; or

- (ii) <sup>62</sup>any other Worker, the Ordinary Pay actually received by him during the Prescribed Period in respect of Construction Work performed;

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

#### **11.2A <sup>63</sup>Amount of Long Service Leave Charge for Working Sub-Contractors**

- (a) The amount of the Long Service Leave Charge under **rule 11.1** shall, in respect of a Working Sub-Contractor, be the rate or rates as Prescribed for the year on 1 January of that year. If a Working Sub-Contractor has made an election to contribute under **rule 12**, the rate or rates as Prescribed shall be payable by the Working Sub-Contractor regardless of what proportion of his time during the Prescribed Period he spent performing Construction Work as a Working Sub-Contractor and regardless of whether he also worked as a Worker during the same Prescribed Period.
- (b) For the avoidance of doubt, by reason of **rule 11.2A(a)** a person will not, by reason of performing Construction Work as a Working Sub-Contractor and as a Worker during the Prescribed Period, be credited by the Trustee with a period of Continuous Service in the Construction Industry for the Prescribed Period in excess of the number of days the person performed Construction Work during the Prescribed Period, whether as a Worker or as a Working Sub-Contractor.

#### **11.3 <sup>64</sup>Amount of Long Service Leave Charge - Prescribed Percentage**

- (a) Until otherwise determined by the Board, the Prescribed Percentage or the Fixed Rate is zero.
- (b) The Trustee shall give all affected Employers and Working Sub-Contractors notice in writing of any change in the Prescribed Percentage or the Fixed Rate, not less than 2 months prior to the change taking effect.
- (c) For the purposes of **rule 11.2(b)**, there may be a different Prescribed Percentage for each of Building Trades Work, Electrical Trades Work and Metal Trades Work.
- (d) For the purposes of **rule 11.2(a)**, there may be a different Fixed Rate for each of Building Trades Work, Electrical Trades Work and Metal Trades Work.

<sup>62</sup> Amended by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>63</sup> Inserted by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>64</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

#### 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 <sup>65</sup>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 11.1** and **11.2A** 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;

<sup>65</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (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 <sup>66</sup>Meaning of Ordinary Pay in Rule 11.2(b)

In **rule 11.2(b)** '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

<sup>66</sup> Amended by a Deed Poll sealed by the Trustee on 13 October 1998.

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 <sup>67</sup>A Working Sub-Contractor registered under **rule 9** may

- (a) by writing addressed to the Trustee;
- (b) by paying money to the Trustee after receiving the first invoice from the Trustee requesting payment;

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 in writing 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 <sup>68</sup>Any payment made to the Trustee under **rule 13** 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 <sup>69</sup>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** in respect of each such Worker (other than an apprentice), in respect of the work performed in that

<sup>67</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>68</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>69</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

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 <sup>70</sup>The Trustee shall cause notice of any assessment made under **rule 16.1** 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 <sup>71</sup>In considering an objection to an assessment under **rule 16.1** 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.

<sup>70</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>71</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- 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 <sup>72</sup>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 accrues 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:

- (a) any remuneration paid in respect of work performed by the Worker outside his normal weekly number of hours of work;
- (b) any allowance paid in respect of fares or travelling expenses; or
- (c) 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 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

<sup>72</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

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 <sup>73</sup>In making a determination under **rule 19.3** 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 **rule 19** 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 <sup>74</sup>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.

<sup>73</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>74</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- 20.3 <sup>75</sup>The Ordinary Pay of a Worker as determined under **rule 20.1** 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) <sup>76</sup>any continuous absence from work in excess of four 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;

<sup>75</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>76</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

- (k) <sup>77</sup>any other interval between periods of employment in the Construction Industry that does not exceed four years; or
- (l) <sup>78</sup>any interval exceeding four 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**.

- 21.1A <sup>79</sup>Notwithstanding anything to the contrary in these Rules, a Worker's service in the Construction Industry will only be deemed to be continuous when the Worker is employed by an Employer.
- 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 <sup>80</sup>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 13** or **14** (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;

<sup>77</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>78</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>79</sup> Inserted by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>80</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (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 <sup>81</sup>Subject to **rule 21.13**, for the purpose of these Rules service in the Construction Industry shall be deemed to not be continuous in the case of any interval between periods of employment in the Construction Industry:
- (a)
- (i) which commenced before 1 August 1983;
  - (ii) which (whether the interval ended before or after 1 August 1983) exceeded nine (9) months before 1 August 1983; and
  - (iii) before which the Worker was employed to perform Building Trades Work; or
- (b) subject to **rule 21.12(a)**:
- (i) which commenced before 1 December 1997;
  - (ii) which (whether the interval ended before or after 1 December 1997) exceeded two years before 1 December 1997; and
  - (iii) before which the Worker was employed to perform Construction Work.

<sup>81</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

- 21.13 <sup>82</sup>Notwithstanding anything in **rule 21.12**, the Board of Directors of the Trustee may, because of the special circumstances of the case, deem periods of employment in the Construction Industry where there has been an interval between periods of employment in the Construction Industry in excess of that prescribed in **rule 21.12(a)** or **rule 21.12(b)** to be Continuous Service in the Construction Industry for the purposes of this **rule 21**.

**21.14 <sup>83</sup>Interval not to be considered in determining entitlement**

For the avoidance of any doubt, any interval between periods of employment in the Construction Industry shall not be taken into account in determining the entitlement of a Worker or a Working Sub-Contractor to a Long Service Leave Benefit in accordance with **rule 27** and **rule 28**.

**22 CONTINUOUS SERVICE OF WORKING SUB-CONTRACTOR**

- 22.1 <sup>84</sup>In calculating the period of Continuous Service in the Construction Industry of a Working Sub-Contractor who has made an election under **rule 12**, 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 which commenced not more than two years before 1 December 1997; or
- (c) subject to paragraphs (a) and (b) of this **rule 22.1**, any service as a Worker which would constitute Continuous Service under **rule 21**.

- 22.2 <sup>85</sup>Service as a Worker by a Working Sub-Contractor who has made an election under **rule 12** shall be counted as part of his Continuous Service in the Construction Industry even if the Working Sub-Contractor has failed to pay to the Trustee Long Service Leave Charges for any period of time or at all, provided that any such failure by the Working Sub-Contractor which:

- (a) commenced before 1 December 1997; and
- (b) exceeded two years in duration before 1 December 1997;

shall not be taken into account in determining the Working Sub-Contractor's Continuous Service in the Construction Industry and shall be deemed to be an interruption to the Working Sub-Contractor's Continuous Service in the Construction Industry.

**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

<sup>82</sup> Inserted by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>83</sup> Inserted by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>84</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>85</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

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 <sup>86</sup>For the purposes of determining any entitlement under these Rules, any period of service in the Construction Industry within the meaning of subparagraph (b) of the definition of Construction Work before 25 November 2003 shall be disregarded.
- 23.8 <sup>87</sup>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.

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<sup>86</sup> Inserted by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>87</sup> Renumbered by a Deed Poll sealed by the Trustee on 25 November 2003 (previously rule 23.7).

23.9 <sup>88</sup>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.

23.10 <sup>89</sup> <sup>90</sup>For the purpose of determining any entitlement under these Rules, any Long Service Leave or payment in lieu of Long Service Leave granted or paid by the employer to a Worker or to which a worker has become entitled (other than under these Rules) 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 shall be taken into account and be deemed to have been leave taken or payment made 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

<sup>88</sup> Renumbered by a Deed Poll sealed by the Trustee on 25 November 2003 (previously rule 23.8).

<sup>89</sup> Renumbered by a Deed Poll sealed by the Trustee on 25 November 2003 (previously rule 23.9).

<sup>90</sup> Rule 23.9 (current rule 23.10) was deleted and replaced by a Deed Poll sealed by the Trustee on 25 November 2003.

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 <sup>91</sup>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. There shall also be credited to each such Working Sub-Contractor interest on all monies standing to his credit (including interest previously credited to him), such interest being calculated from:

- (a) the date of receipt of the payment of the Long Service Leave Charge; or
- (b) the date of the crediting of interest paid in the past to the credit of the Working Sub-Contractor;

as the case may be. The said interest shall be calculated as a percentage of the total sum standing to the credit of the Working Sub-Contractor as at the date such interest is to be calculated. The said percentage rate shall be determined by the Trustee, after taking into account the earning rate of the Fund for the previous 12 months ending on 30 April of that year (with the earning rate of the Fund being adjusted to represent the expenses incurred in administering the Fund, such adjustment to not exceed 25% of the earning rate of the Fund). The percentage rate so determined by the Trustee shall then be approved by the Board of Directors of the Trustee on or before 30 June of that year and shall apply for the preceding period of 12 months commencing on 1 July of that 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 <sup>92</sup>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 **rule 25.1**.

## 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.

<sup>91</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>92</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

## 27 ENTITLEMENT TO LONG SERVICE LEAVE OF WORKER

27.1 <sup>93</sup>Every Worker is entitled to a Long Service Leave Benefit in respect of Continuous Service performing Construction Work for an Employer (whether before or after the commencement of the Trust Deed (or these Rules)).

27.2 <sup>94</sup>The amount of the entitlement is:

- (a) <sup>95</sup>prior to and including 30 June 2002 on the completion by a Worker of fifteen years' Continuous Service in the Construction Industry - 13 weeks' Long Service Leave on Ordinary Pay;
- (b) <sup>96</sup>on and after 1 July 2002 on the completion by a Worker of ten years' Continuous Service in the Construction Industry – 13 weeks' Long Service Leave on Ordinary Pay;
- (c) <sup>97</sup>prior to and including 30 June 2002, in the case of a Worker who has previously taken Long Service Leave, an amount of Long Service Leave on Ordinary Pay equal to one-sixtieth of the period of his Continuous Service in the Construction Industry that has occurred since he last took Long Service Leave plus any accrued Long Service Leave which he has not previously taken;
- (d) <sup>98</sup>in the case of a Worker who has completed more than fifteen years' Continuous Service in the Construction Industry prior to and including 30 June 2002 and whose service in the Construction Industry is terminated otherwise than by the death of the Worker - an amount of Long Service Leave on Ordinary Pay 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);
- (e) <sup>99</sup>in the case of a Worker who has completed more than ten years' Continuous Service in the Construction Industry prior to and including 30 June 2002 and whose service in the Construction Industry is terminated otherwise than by the death of the Worker - an amount of Long Service Leave on Ordinary Pay 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);
- (f) <sup>100</sup>prior to and including 30 June 2001 in the case of a Worker who has completed at least ten but less than fifteen 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

<sup>93</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>94</sup> Amended by Deed Polls sealed by the Trustee on 2 December 1997 and on 12 June 2001.

<sup>95</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>96</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>97</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>98</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>99</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>100</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

of Long Service Leave on Ordinary Pay equal to one-sixtieth of the period of his Continuous Service in the Construction Industry;

(g)<sup>101</sup>

- (i) on and after 1 July 2001 to 30 June 2002, in the case of a worker who has completed at least seven but less than fifteen years of Continuous Service in the Construction Industry - an amount of Long Service Leave on Ordinary Pay equal to one-sixtieth of the period of his Continuous Service in the Construction Industry;
- (ii) on and after 1 July 2002, in the case of a worker who has completed at least seven years of Continuous Service in the Construction Industry - an amount of Long Service Leave on Ordinary Pay equal to one-fortieth of the period of his Continuous Service in the Construction Industry. For the sake of clarification, a worker's long service leave entitlement, in respect of service prior to 1 July 2002, shall be calculated at the rate of one-sixtieth of the period of his Continuous Service in the Construction Industry.

27.3 <sup>102</sup>For the purposes of determining the amount of a Worker's entitlement to a Long Service Leave Benefit, a Worker is deemed to have performed one year's Continuous Service in the Construction Industry if during the period of twelve (12) months immediately before 30 June or 31 December of that year the Worker has performed at least 220 days of Continuous Service in the Construction Industry. If a Worker during the said period of twelve (12) months has not performed at least 220 days Continuous Service in the Construction Industry, he will be regarded as having performed only the actual number of days of Continuous Service in the Construction Industry which he has in fact performed during the said period of twelve (12) months. If a Worker during the said period of twelve (12) months performs more than 220 days Continuous Service in the Construction Industry, that Worker will still be deemed to have performed only one year's Continuous Service in the Construction Industry. For the purposes of this **rule 27.3**, it shall be in the discretion of the Trustee whether the said period of twelve (12) months ends on 30 June or 31 December of a year, provided that the Trustee shall give all affected Workers notice (including, without limitation, by publication of a notice in a publication that the Trustee may from time to time send to Workers) of any change to the date on which the said period of twelve (12) months ends.

27.4 <sup>103</sup>The Trustee must pay from the Fund to the Worker forthwith upon receipt of a request in writing from the Worker the Long Service Leave Benefit to which he is entitled.

## **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)).

<sup>101</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>102</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>103</sup> Inserted by a Deed Poll sealed by the Trustee on 2 December 1997.

28.2 <sup>104</sup>The amount of the entitlement shall be:

- (a) <sup>105</sup>prior to and including 30 June 2001 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;
- (b) <sup>106</sup>on and after 1 July 2001 in the case of a Working Sub-Contractor who has completed at least seven but less than ten years' Continuous Service in the Construction Industry - a refund of his total contributions together with interest at the determined rate;
- (c) <sup>107</sup>prior to and including 30 June 2002 on the completion by a Working Sub-Contractor of fifteen years' Continuous Service in the Construction Industry, a refund of his total contributions for the relevant period together with interest at the determined rate;
- (d) <sup>108</sup>on and after 1 July 2002 on the completion by a Working Sub-Contractor of ten years' Continuous Service in the Construction Industry, a refund of his total contributions for the relevant period together with interest at the determined rate;
- (e) in the case of a person who has previously received a refund of his total contributions together with interest in accordance with this **rule 28.2**, a refund of his total contributions since his last such refund together with interest at the determined rate.

28.3 <sup>109</sup>The Trustee must pay from the Fund to the Working Sub-Contractor forthwith upon receipt of a request in writing from the Working Sub-Contractor the Long Service Leave Benefit 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 <sup>110</sup>This entitlement shall accrue:

- (a) <sup>111</sup>(i) prior to and including 30 June 2002, on the completion of fifteen years' Continuous Service in the Construction Industry;

<sup>104</sup> Amended by a Deed Poll sealed by the Trustee on 13 October 1998.

<sup>105</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>106</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>107</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>108</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>109</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>110</sup> Amended by a Deed Poll sealed by the Trustee on 13 October 1998.

(ii) on and after 1 July 2002 on the completion of ten years' Continuous Service in the Construction Industry;

- (b) <sup>112</sup>prior to and including 30 June 2001 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;
- (c) <sup>113</sup>on and after 1 July 2001 in the case of a person who has completed at least seven years' but less than ten years' Continuous Service in the Construction Industry and whose service in the Construction Industry is terminated;
- (d) in the case of a person who has previously taken Long Service Leave or received a refund of his total contributions together with interest, upon the Trustee receiving a written request from the person for a Long Service Leave Benefit.

29.3 <sup>114</sup>Subject to **rule 29.5**, the amount of the entitlement shall be:

- (a) <sup>115</sup>for a person who is a Worker at the time the entitlement accrues under **rule 29.2(a)(i)**, or **rule 29.2(b)**, 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;
- (aa) for a person who is a Worker at the time the entitlement accrues and who has previously taken Long Service Leave or received a refund of his total contribution together with interest;
  - (1) such amount of Long Service Leave equal to one-sixtieth of the period of his Continuous Service in the Construction Industry as a Worker since he last (if ever) took Long Service Leave plus any accrued Long Service Leave which he has not previously taken; and
  - (2) a refund from the Fund of his total contributions since he last (if ever) received such a refund, together with interest at the determined rate;
- (b) <sup>116</sup>for a person who is a Working Sub-Contractor at the time the entitlement accrues under **rule 29.2(a)(i)**, or **rule 29.2(b)**, 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;

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<sup>111</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>112</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>113</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>114</sup> Amended by Deed Polls sealed by the Trustee on 13 October 1998 and 12 June 2001.

<sup>115</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>116</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

(ba) for a person who is a Working Sub-Contractor at the time the entitlement accrues and who has previously received a refund from the Fund of his total contributions together with interest or who has previously taken Long Service Leave:

- (1) a refund from the Fund of his total contributions since he last (if ever) received such a refund, together with interest at the determined rate; and
- (2) 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 since he last (if ever) took Long Service Leave plus any accrued Long Service Leave which he has not previously taken.

29.4 <sup>117</sup>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 prior to and including 30 June 2002 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)**.

29.5 <sup>118</sup>In addition to the amount of entitlement under **rule 29.3** in the case of a person who has completed more than ten years' Continuous Service in the Construction Industry on or after 1 July 2002 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-fortieth 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)**.

29.6 <sup>119</sup>For the purposes of determining under **rule 29.3** the amount of an entitlement to a Long Service Leave Benefit, a person is deemed to have performed one year's Continuous Service in the Construction Industry as a Worker if during the period of twelve (12) months immediately before 30 June or 31 December of that year the person performed at least 220 days of Continuous Service in the Construction Industry as a Worker. If a person during the said period of twelve (12) months has not performed at least 220 days Continuous Service in the Construction Industry as a Worker, he will be regarded as having performed only the actual number of days of Continuous Service in the Construction Industry as a Worker which he has in fact performed during the said period of twelve (12) months. If a Worker during the said period of twelve (12) months performs more than 220 days Continuous Service in the Construction Industry, that Worker will still be deemed to have performed only one year's Continuous Service in the Construction Industry. For the purposes of this **rule 29.6**, it shall be in the discretion of the Trustee whether the said period of twelve (12) months ends on 30 June or 31 December of a year, provided that the Trustee shall give all affected Workers notice (including, without

<sup>117</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>118</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>119</sup> Inserted by a Deed Poll sealed by the Trustee on 2 December 1997.

limitation, by publication of a notice in a publication that the Trustee may from time to time send to Workers) of any change to the date on which the said period of twelve (12) months ends.

29.7 <sup>120</sup>The amount of an entitlement accrued by a person under **rule 29.2(b)** becomes payable to that person immediately upon receipt by the Trustee of written notification of the termination by that person of that person's service in the Construction Industry.

29.8 <sup>121</sup>The amount of an entitlement accrued by a person under **rule 29.4** becomes payable to that person immediately upon receipt by the Trustee of written notification of the termination of that person's service in the Construction Industry.

### **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 <sup>122</sup>The amount referred to in **rule 30.1** becomes payable to the Worker immediately upon receipt by the Trustee of written 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.

<sup>123</sup>

<sup>120</sup> Inserted by a Deed Poll sealed by the Trustee on 10 October 2000.

<sup>121</sup> Inserted by a Deed Poll sealed by the Trustee on 10 October 2000

<sup>122</sup> Amended by a Deed Poll sealed by the Trustee on 10 October 2000.

<sup>123</sup> Rule 30.5 was deleted by a Deed Poll sealed by the Trustee on 2 December 1997.

### 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 <sup>124</sup>Where a Worker who has completed more than fifteen years of Continuous Service in the Construction Industry dies on or before 30 June 2002 and 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 <sup>125</sup>Where a Worker who has completed more than ten years of Continuous Service in the Construction Industry dies on or after 1 July 2002 and 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(b)** a sum equal to the amount of his Ordinary Pay for a period equalling one-fortieth of the fractional period. For the sake of clarification, the entitlement will be calculated on the basis of one-sixtieth of the fractional period in respect of service by the Worker prior to 1 July 2002.
- 31.4 <sup>126</sup>Where a Worker who has completed at least seven years’ of Continuous Service in the Construction Industry dies on or after 1 July 2001 and on or before 30 June 2002 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.
- 31.5 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;

<sup>124</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>125</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>126</sup> Amended pursuant to an Order in Council made on 12 June 2001.

- (b) a refund of his contributions together with interest thereon at the determined rate.

31.6

- <sup>127</sup>(i) Where a Worker, who has completed at least 55 days of Continuous Service (as defined in **rule 21**) in the Construction Industry, dies on or after 1 July 2001 and on or before 30 June 2002, while he is engaged in the Construction Industry, 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.
- <sup>128</sup>(ii) Where a Worker, who has completed at least 55 days of Continuous Service (as defined in **rule 21**) in the Construction Industry, dies on or after 1 July 2002, while he is engaged in the Construction Industry, 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-fortieth of the period of his Continuous Service in the Construction Industry. For the sake of clarification, the entitlement will be calculated on the basis of one-sixtieth of the fractional period in respect of service by the Worker prior to 1 July 2002.
- <sup>129</sup>(iii) Where a Worker, who has not completed ten years of Continuous Service in the Construction Industry, dies prior to 1 July 2001, no sum shall be payable from the Fund to his personal representative.

- 31.7 <sup>130</sup>On and from 1 July 2001, where a Working Sub-Contractor, who has completed at least 55 days of Continuous service in the Construction Industry, dies there shall be payable from the Fund to his personal representative, the amount equal to his contributions together with interest at the determined rate.

31.8

- <sup>131</sup>(i) Where a person who is entitled to an amount of Long Service Leave and a refund of contributions dies on or after 1 July 2001 to 30 June 2002, 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.

<sup>127</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>128</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>129</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>130</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>131</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (ii) Where a person who is entitled to an amount of Long Service Leave and a refund of contributions dies on or after 1 July 2002, 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-fortieth 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 of his Continuous Service as a Worker in the Construction Industry.

For the sake of clarification, the entitlement will be calculated on the basis of one-sixtieth of the fractional period in respect of service by the Worker prior to 1 July 2002.

### <sup>132</sup>**31A COVERAGE FOR NON-CONSTRUCTION INDUSTRY WORK – NO ACCRUED ENTITLEMENT**

#### **31A.1 Where:**

- (1) a Worker or Working-Sub-Contractor is recorded in the Records as having performed periods of Continuous Service in the Construction Industry but is not as at 31 October 1999 entitled to a Long Service Benefit;
- (2) some or all of the work performed by the Worker or Working Sub-Contractor before 31 October 1999 which is recorded in the Records as being Continuous Service in the Construction Industry by the Worker or Working Sub-Contractor was not in fact work in the Construction Industry; and
- (3) the Worker or Working Sub-Contractor is or was not disentitled from obtaining a Long Service Leave Benefit because of section 34 of the *Construction Industry Long Service Leave Act 1983* or **rule 21** (reading each of those provisions as if the term Construction Industry is or was defined to include all of the work performed by the Worker or Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor);

this **rule 31A** shall be applied to such a Worker or Working Sub-Contractor.

- 31A.2** Subject to **rule 31A.3**, provided always that the Worker or Working Sub-Contractor continues to perform the work or work of the kind he was performing as at 31 October 1999 or work in the Construction Industry, then the Worker or Working Sub-Contractor is entitled to a Long Service Leave Benefit upon completing a period or further periods of Continuous Service after 31 October 1999. The period of further Continuous Service in the Construction Industry (reading that term as if it included the work being performed by the Worker or Working Sub-Contractor as at 31 October 1999 or work of that kind) which the Worker or Working Sub-Contractor must perform before he is entitled to any Long Service Leave Benefit under this **rule 31A** shall be calculated by the formula –

<sup>132</sup> Inserted by a Deed Poll sealed by the Trustee on 13 October 1998.

$$X = 10 \text{ years} - Y$$

Where –

X is the period of Continuous Service that the Worker or Working Sub-Contractor must still complete;

Y is the period of Continuous Service recorded in the Records as at 31 October 1999 in respect of the Worker or Working Sub-Contractor.

- 31A.3 <sup>133</sup>**Rule 31A.2** only applies subject to **rule 21** (reading that rule as if the term Construction Industry is defined to include all of the work being performed by the Worker or Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor).
- 31A.4 Notwithstanding anything to the contrary in these Rules, where the Worker accrues an entitlement to a Long Service Leave Benefit as a result of **rule 31A.2**, the total amount of the Long Service Leave Benefit shall be calculated in accordance with **rule 36.2** as if the term Construction Industry is defined to include all of the work performed by the Worker or Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor.
- 31A.5 For the avoidance of doubt, once a Worker or Working Sub-Contractor has accrued an entitlement to a Long Service Leave Benefit under **rule 31A.2**:
- (A) the performance by the Worker or Working Sub-Contractor of the work he was performing as at 31 October 1999 or work of that kind will no longer be regarded as being Continuous Service in the Construction Industry for the purposes of **rule 31A.2**; and
  - (B) the Worker or Working Sub-Contractor shall have no further entitlement to any payment from the Trustee in respect of any work performed by him which is not work in the Construction Industry (as that term is defined in **rule 1.1**), whether before or after 31 October 1999, even if the Worker or Working Sub-Contractor continues to perform the same work after the entitlement to a Long Service Leave Benefit accrues as he was performing before the entitlement accrued.

#### <sup>134</sup>**31B COVERAGE FOR NON-CONSTRUCTION INDUSTRY WORK – ACCRUED ENTITLEMENT**

31B.1 Where:

- (1) a Worker or Working Sub-Contractor was recorded in the Records as having performed periods of Continuous Service in the Construction Industry and was as at 31 October 1999 entitled to a Long Service Leave Benefit;
- (2) some or all of the work performed by the Worker or Working Sub-Contractor before 31 October 1999 which was recorded in the Records as being Continuous

<sup>133</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>134</sup> Inserted by a Deed Poll sealed by the Trustee on 7 December 1999.

Service in the Construction Industry by the Worker or Working Sub-Contractor was not in fact included in the definition of Construction Industry; and

- (3) the Worker or Working Sub-Contractor is not or was not disentitled from obtaining a Long Service Leave Benefit because of section 31 of the *Construction Industry Long Service Leave Act 1983* or **rule 21** (reading each of those provisions as if the term Construction Industry is or was defined to include all of the work performed by the Worker or Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor) this **rule 31B** shall be applied to such a Worker or Working Sub-Contractor.

31B.2 Subject to **rule 31B.3**, the Worker or Working Sub-Contractor will be entitled to a Long Service Leave Benefit in relation to his Continuous Service in the Construction Industry (reading that term as if it includes all of the work performed by the Worker or Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor) up to 31 October 1999, as recorded in the Records.

31B.3 **Rule 31B.2** only applied subject to **rule 21** (reading that rule as if the term Construction Industry includes all of the work performed by the Worker or Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor).

31B.4 Notwithstanding anything to the contrary in these Rules, where the Worker has an entitlement to a Long Service Leave Benefit as a result of **rule 31B.2**, the total amount of the Long Service Leave Benefit shall be calculated in accordance with **rule 36.2** as if the term Construction Industry is defined to include all of the work performed by the Worker or the Working Sub-Contractor which was as at 31 October 1999 recorded in the Records in relation to that Worker or Working Sub-Contractor.

31B.5 For the avoidance of any doubt:

- (A) the performance after 31 October 1999 by a Worker or Working Sub-Contractor to whom this rule 31B applies of the work he was performing as at 31 October 1999 or work of that kind will no longer be regarded as being Continuous Service in the Construction Industry unless the work is work in the Construction Industry (as that term is defined in **rule 1.1**); and
- (B) the Worker or Working Sub-Contractor shall have no further entitlement to any payment from the Trustee in respect of any work performed by him after 31 October 1999 which is not work in the Construction Industry (as that term is defined in **rule 1.1**), even if the Worker or Working Sub-Contractor continues to perform the same work after 31 October 1999 as he was performing before that date.

## 32 CERTAIN REFUNDS TO WORKING SUB-CONTRACTORS

32.1 <sup>135</sup>Where on the written 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 written 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 <sup>136</sup>Where on the written 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 32.1(c)**,<sup>137</sup> the Trustee shall pay from the Fund a refund of his contributions.

32.4 <sup>138</sup>Where, before 1 December 1997, a Working Sub-Contractor had 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. For the avoidance of doubt, the failure by a Working Sub-Contractor to pay Long Service Leave Charges under Part 5 after 1 December 1997 for any period of time will not result in he being deemed under this **rule 32.4** to have ceased to be engaged in the Construction Industry.

### 33 DETERMINATION OF ENTITLEMENT IN CERTAIN CASES

<sup>135</sup> Amended by a Deed Poll sealed by the Trustee on 10 October 2000.

<sup>136</sup> Amended by a Deed Poll sealed by the Trustee on 10 October 2000.

<sup>137</sup> Amended by a Deed Poll sealed by the Trustee on 7 December 1999.

<sup>138</sup> Amended by a Deed Poll sealed by the Trustee on 7 December 1999.

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 <sup>139</sup> <sup>140</sup> Subject to an Employer and a Worker so agreeing, a Worker can take Long Service Leave to which he is entitled in as many separate periods as he wishes provided that the Worker may only take his Long Service Leave Benefit in periods of one week or more at a time, except where the Worker retires or expects to be permanently leaving the Construction Industry.

35.2 <sup>141</sup> 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;

and the right to receive the Long Service Leave Benefit calculated (subject to **rule 35.4**) on the basis of the Worker's Ordinary Pay in respect of the leave shall accrue accordingly.

35.3 <sup>142</sup> Where a Worker who is on Long Service Leave:

- (a) has been paid in full on the commencement of his leave pursuant to **rule 35.2(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 written application to the Trustee the Trustee shall forthwith pay to him from the Fund the difference on this return to work.

35.4 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 SEVEN YEARS OF CONTINUOUS SERVICE<sup>143</sup>

36.1 <sup>144</sup> On and from 1 July 2001, an Employer may by agreement with a Worker grant Long Service Leave on the completion by the Worker of seven years of Continuous Service in the Construction Industry before the entitlement to that leave has accrued.

<sup>139</sup> Rule 35.1 was deleted in its entirety by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>140</sup> A new Rule 35.1 was inserted by a Deed Poll sealed by the Trustee on 2 December 1997 and a further new Rule 35.1 was inserted by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>141</sup> Amended by a Deed Poll sealed by the Trustee on 13 May 1997.

<sup>142</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>143</sup> Amended pursuant to an Order in Council made on 12 June 2001.

36.2 <sup>145</sup>Where Long Service Leave referred to in **rule 36.1** (in **rule 36.3** called 'leave in advance') is granted and taken it shall not exceed such amount of Long Service Leave as equals:

- (i) in respect of service on or before 30 June 2002, one-sixtieth part of the period of his Continuous Service in the Construction Industry;
- (ii) in respect of service on or after 1 July 2002, one-fortieth part of the period of his Continuous Service in the Construction Industry.

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 <sup>146</sup>On and from 1 July 2001, a Working Sub-Contractor who has not terminated service in the Construction Industry may take his Long Service Leave Benefit after seven years of Continuous Service in the Construction Industry before the entitlement to that Long Service Leave Benefit has accrued.

37.2 <sup>147</sup>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 <sup>148</sup>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) (i) in respect of service on or before 30 June 2002, an amount equal to one-sixtieth part of the Working Sub-Contractor's period of Continuous Service as a Worker;
- (ii) in respect of service on or after 1 July 2002, an amount equal to one-fortieth of the Working Sub-Contractor's period of Continuous Service as a Worker; and

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<sup>144</sup> Amended pursuant to an Order in Council made on 12 June 2001.

<sup>145</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>146</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>147</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>148</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (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 <sup>149</sup>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 A PAYMENT FROM FUND IN RESPECT OF LEAVE**

38.1 <sup>150</sup>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 21 December 1973 and before the Effective Date shall be made from the Fund.

38.3 <sup>151</sup>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 1974 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 <sup>152</sup>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 <sup>153</sup>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

<sup>149</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>150</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>151</sup> Amended by Deed Polls sealed by the Trustee on 2 December 1997 and on 12 June 2001.

<sup>152</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>153</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

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 <sup>154</sup>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 <sup>155</sup>**PAYMENT FROM FUND IN RESPECT OF LEAVE ACCRUED UNDER FORMER FUND**

39.1 <sup>156</sup>Subject to **rule 39.1A**, no payment shall be made from the Fund in relation to any entitlement which, under the *Construction Industry Long Service Leave Act 1983*, was deemed to have accrued before 1 August 1983. Nothing in this **rule 39.1** shall affect the liability of the Employer to grant such leave not taken or to make any payment not made (as the case may be) under the *Construction Industry Long Service Leave Act 1983*.

39.1A <sup>157</sup>No payment shall be made from the Fund in relation to any entitlement which:

<sup>154</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>155</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>156</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>157</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001 – Deed Poll erroneously refers to 39.1A rather than 31.8A.

- (a) was under the *Construction Industry Long Service Leave Act 1983* deemed to accrue on or after 1 August 1983; and
- (b) accrued before 1 December 1997;

where an equivalent payment was made from the Former Fund. Nothing in this **rule 39.1A** shall affect the liability of the Trustee to make any payment from the Fund in respect of an entitlement which accrued on or after 1 August 1983 and before 1 December 1997 but in respect of 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 1 August 1983 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 1 August 1983;
- (b) <sup>158</sup>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 1 August 1983; 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 <sup>159</sup>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 1 August 1983 shall be made from the Fund.

40.2 <sup>160</sup>If an Employer makes any payment on or after 1 August 1983 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 1 August 1983 (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.

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<sup>158</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>159</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>160</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

40.3 <sup>161</sup>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 <sup>162</sup> <sup>163</sup>The Trustee is not required to make a reimbursement under this **rule 40** unless:

- (a) the Worker has:
  - (i) served the minimum period of Continuous Service in the Construction Industry required for a Long Service Leave Benefit to be paid under these Rules; or
  - (ii) served a minimum period of 10 years' service with a single employer and qualifies for long service leave under the Long Service Leave Act 1992 (Vic); and
- (b) the Employer makes written 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 <sup>164</sup>Long Service Leave Returns

- (a) 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:

<sup>161</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>162</sup> Amended by Deed Polls sealed by the Trustee on October 2000 and 12 June 2001 – numbering erroneously referred to in October 2000 Deed Poll as 40.4 rather than 39.4.

<sup>163</sup> Rule 40.4 was deleted in its entirety and replaced by a Deed Poll sealed by the Trustee on 25 November 2003.

<sup>164</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

- (i) with respect to every Worker employed to perform Construction Work during that period:
  - (1) the Worker's name and registration number (if any); and
  - (2) 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
  - (3) 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
- (ii) 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
- (iii) 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
- (iv) in the case of an apprentice who has completed his or her apprenticeship during that period, the date of that completion; and
- (v) with respect to every Worker who ceased employment during that period:
  - (1) the Worker's name and Registration Number (if any); and
  - (2) the date of cessation of employment; and
  - (3) the amount of annual leave to which the Worker was entitled but which the Worker has not taken; and
  - (4) the amount paid to the Worker in respect of annual leave not taken.

- (b) Once during the period referred to in **rule 41.1(c)** the Trustee will require the Employer to, and the Employer shall, deliver or cause to be delivered to the Trustee within fourteen (14) days of the Trustee so requiring in writing a return (which may be separate from or part of the return required by **rule 41.1(a)**) showing the amount of Ordinary Pay received by the Worker during the last week of the Prescribed Period that has most recently ended, provided that from time to time the Trustee may require such information to be provided by such Employer or Employers as it sees fit and the Employer or Employers so selected shall deliver or cause to be delivered to the Trustee within fourteen (14) days of the Trustee so requiring a return showing the amount of Ordinary Pay received by the Worker during the last week of the Prescribed Period that has most recently ended.

- (c) <sup>165</sup>The period referred to in **rule 41.1(b)** shall be such period as determined by the Trustee from time to time, and shall as at the Effective Date be twelve (12) months.

#### **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 <sup>166</sup>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 <sup>167</sup>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 42.4** 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) <sup>168</sup>the period of any absence or interruption of a kind mentioned in **rule 21**; and

<sup>165</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>166</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>167</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>168</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (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 <sup>169</sup>REGISTRATION CARDS

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

- (a) to each Worker within 1 month 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 1 month 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 <sup>170</sup>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;
- (f) that a person is or is not entitled under **rule 10A** to be certified as a Non-Voting Person; or
- (g) otherwise concerning a person's obligations or entitlements under these Rules (included obligations or entitlements under these Rules arising by virtue of the Act).

<sup>169</sup> Amended by a Deed Poll sealed by the Trustee on 11 November 1997 and amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>170</sup> Amended by a Deed Poll sealed by the Trustee on 11 November 1997.

## 45.2 <sup>171</sup>**Trustee may determine on own motion or on application**

Subject to **rule 45.4** and **rule 10A.2**, 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 <sup>172</sup>**Prescribed Form**

An application for a decision by the Trustee under **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 <sup>173</sup>**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 <sup>174</sup>**Notice of decisions**

<sup>171</sup> Amended by Deed Polls sealed by the Trustee on 11 November 1997 and on 12 June 2001.

<sup>172</sup> Amended by Deed Polls sealed by the Trustee on 11 November 1997 and on 12 June 2001.

<sup>173</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

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 <sup>175</sup>**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 <sup>176</sup>**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**

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<sup>174</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>175</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>176</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

#### 46.1 <sup>177</sup>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 <sup>178</sup>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 <sup>179</sup>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 <sup>180</sup>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

<sup>177</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>178</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>179</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

<sup>180</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (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 <sup>181</sup>REFUNDS**

- 50.1 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.
- 50.2 Where the Trustee finds in any case that Long Service Leave Benefits paid to a Worker or to a Working Sub-Contractor have been overpaid, it may within seven years after the date of the overpayment demand that the person to whom the overpayment was made repay to the Trustee the full amount of the Long Service Leave Benefit found to be overpaid and such moneys shall upon receipt become part of the Fund.

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<sup>181</sup> Amended by a Deed Poll sealed by the Trustee on 2 December 1997.

<sup>182</sup>FORM 1

To: The Trustee  
The Construction Industry Long Service Leave Fund

I \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Address)

apply under **rule 45**<sup>183</sup> 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

I \_\_\_\_\_

- \* am a Non-Voting Person
- \* am not a Non-Voting Person
- \* am eligible to be, and wish to become a Non-Voting Person
- \* am eligible to be, but do not wish to become a Non-Voting Person

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;

<sup>182</sup> Amended by a Deed Poll sealed by the Trustee on 11 November 1997

<sup>183</sup> Amended by a Deed Poll sealed by the Trustee on 12 June 2001.

- (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.

Consolidation Copy for Reference Purposes

Consolidation Copy for Reference Purposes