



ANNO TRICESIMO PRIMO

# ELIZABETHAE II REGINAE

A.D. 1982

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## No. 17 of 1982

An Act to amend the Long Service Leave (Building Industry) Act, 1975-1976.

[Assented to 11 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Long Service Leave (Building Industry) Act Amendment Act, 1982".

(2) The Long Service Leave (Building Industry) Act, 1975-1976, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Long Service Leave (Building Industry) Act, 1975-1982".

Commence-  
ment.

2. This Act shall come into operation on the first day of July, 1982.

Amendment of  
s. 4—  
Definitions.

3. Section 4 of the principal Act is amended—

(a) by inserting before the definition of "the Board" the following definition:

"allowable absence" in relation to a building worker means an absence of that worker from his work as a building worker, being an absence of the kind declared by regulation to be an allowable absence;

(b) by striking out from the definition of "the Board" the passage "(Casual Employment)" and substituting the passage "(Building Industry)";

(c) by striking out the definitions of "employer" and "effective service" and substituting the following definitions:

"contribution" means an amount payable by an employer to the Commissioner under this Act:

"effective service" in relation to a building worker or former building worker means a period with which he is entitled to be credited as effective service pursuant to this Act:

“effective service entitlement” in relation to a building worker or former building worker means the aggregate of that person’s periods of effective service:

“employer” means a person or body that employs a person under a contract of employment as a building worker for the purpose of any of the following activities:

(a) the construction, renovation, alteration, maintenance, repair or demolition of—

- (i) any building;
- (ii) structures (including tanks) for the storage or supply of water;
- (iii) structures for the conveyance, treatment or disposal of sewage or effluent;
- (iv) bridges, viaducts, aqueducts or tunnels;
- (v) chimney stacks, cooling towers or silos, or the construction, improvement or alteration of docks, jetties, piers or wharves;

(b) pile driving or the preparation of the site for an activity referred to in paragraph (a);

(c) the construction on the site of an activity referred to in paragraph (a) of structures or fixtures required for or in connection with that activity;

or

(d) the construction off the site of an activity referred to in paragraph (a) of structures or fixtures required for or in connection with that activity where the person or body in question also engages in an activity or activities referred to in that paragraph,

but does not include—

(e) the Crown;

(f) any agency or instrumentality of the Crown;

(g) a council within the meaning of the Local Government Act, 1934-1981;

(h) any person or body of a prescribed class;

or

(i) any person or body where the activities of the kinds referred to in paragraphs (a) to (c) engaged in by the person or body are (taken together) subsidiary to other activities engaged in by that person or body;

(d) by striking out the definition of “the industry”;

(e) by striking out the definition of “ordinary pay” and substituting the following definitions:

“ordinary hours” in relation to a period of service of a person means the number of hours prescribed by award or industrial agreement under the Industrial Conciliation

and Arbitration Act, 1972, as amended, or the *Conciliation and Arbitration Act 1904* of the Commonwealth as amended, as the ordinary hours of work in a week in relation to work of the kind performed by the person during that period of service:

“ordinary pay” in relation to work as a building worker means the weekly base rate of pay for ordinary hours prescribed by award or industrial agreement under the Industrial Conciliation and Arbitration Act, 1972, as amended, or the *Conciliation and Arbitration Act 1904* of the Commonwealth as amended in relation to work of that kind, including any rate or payment of a class declared by regulation to form part of ordinary pay in relation to work of that kind:

“prescribed percentage” in relation to wages paid to a building worker during a particular period means the percentage declared by regulation to be the prescribed percentage in relation to that period:

“site” in relation to an activity means the place at which the activity is carried on and includes any adjacent area where materials and equipment required for or in connection with the activity are stored:

“special rates or allowances” means special rates or allowances whether or not prescribed by an industrial award or agreement (including any rate or payment of a class declared by regulation to be a special rate or allowance);;

(f) by striking out from the definition of “worker” the passage “means a person who is engaged under a contract of employment for hire or reward in the industry in the occupation or calling” and substituting the passage “or ‘building worker’ means a person engaged by an employer under a contract of employment to perform work”;

(g) by striking out from the definition of “worker” the passage “but does not include a person who having been a worker has received a payment under section 35 of this Act”;

and

(h) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) For the purposes of this Act, periods of effective service shall be reckoned in months to one decimal place.

(3) For the purposes of this Act, in determining whether particular activities are subsidiary to other activities, regard shall be had to the number of persons engaged exclusively in the firstmentioned activities and to the number of persons engaged in the other activities (disregarding in both cases persons who are engaged wholly or principally in work of an administrative or clerical nature).

5. Section 8 of the principal Act is amended by striking out from subsection (1) the passage “(Casual Employment)” and substituting the passage “(Building Industry)”.

Amendment of  
s. 8—  
Constitution  
of Board.

6. Section 15 of the principal Act is amended by striking out the passage “and the consent of the Minister”.

Amendment of  
s. 15—  
Board may  
make use of  
officers, etc.

7. The following section is inserted after section 17 of the principal Act:

Insertion of  
new s. 17a.

17a. (1) The Board may, with the approval of the Minister and Treasurer, lend moneys forming part of the Fund to an industrial organization for the purpose of establishing or operating any group training scheme for the building industry approved by the Industrial and Commercial Training Commission.

Loans for  
training  
purposes.

(2) A loan under subsection (1) shall be subject to such terms and conditions as the Minister and the Treasurer think appropriate and may be made free of interest.

8. Sections 22 and 23 of the principal Act are repealed and the following section is substituted:

Repeal of  
ss. 22 and 23  
and substitution  
of new section.

22. Where—

- (a) an employer engages a building worker;
- (b) a building worker dies or ceases to be employed by an employer;
- (c) during the course of employment by any person, a person becomes a building worker in the employment of that person;

Returns as to  
employment of  
workers.

or

- (d) a person ceases to be a building worker but continues in the employment of the person by whom he was employed as a building worker,

the employer shall, within one month, give written notice containing the prescribed particulars to the Board.

Penalty: Five hundred dollars.

9. Section 24 of the principal Act is amended—

Amendment of  
s. 24—  
Contributions  
by employers.

- (a) by inserting in subsection (1) after the passage “total of the wages” the passage “(excluding any amounts by way of special rates or allowances)”;
- (b) by striking out from subsection (1) the passage “Two hundred dollars” and substituting the passage “Five hundred dollars”;
- (c) by striking out subsection (2) and substituting the following subsection:

(2) On or before the twenty-first day of each month each employer shall pay to the Commissioner a sum equal to the prescribed percentage of the total of the wages (excluding any

**Long Service Leave (Building Industry) Act Amendment Act, 1982**

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amounts by way of special rates or allowances) paid by him to his workers in respect of the month immediately preceding that firstmentioned month.

Penalty: Five hundred dollars.;

and

(d) by striking out subsection (4).

**10. Sections 24a and 24b of the principal Act are repealed and the following sections are substituted:**

Repeal of  
ss. 24a and  
24b and  
substitution  
of new  
sections.

Contributions  
in relation to  
certain  
effective  
service.

24a. (1) Where—

(a) a person is entitled to be credited with a period of effective service by virtue of section 27 in respect of a period of service occurring before the commencement of this Act;

and

(b) a certificate evidencing effective service in relation to that period of service had not been issued by the Board pursuant to section 29 or 29a of this Act as in force before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982,

a contribution shall be payable to the Commissioner by the person who was the employer in respect of that period of service as if a certificate referred to in paragraph (b) had been issued by the Board evidencing the period of effective service referred to in paragraph (a).

(2) Where—

(a) a person is entitled to be credited with effective service by virtue of section 27 in respect of a period of service occurring after the commencement of this Act;

and

(b) contributions have not been paid to the Commissioner pursuant to this Act by the person who was the employer in respect of that period of service,

a contribution shall be payable to the Commissioner by the person who was the employer in respect of that period of service of an amount equal to the prescribed percentage of the total wages paid for that service.

(3) Where a person is entitled to be credited with effective service by virtue of section 28 (2), a contribution shall be payable to the Commissioner by the employer of that person equal to the prescribed percentage of the total wages (excluding any amounts by way of special rates or allowances) paid to that person during the period of his continuous service within the meaning of the Long Service Leave Act, 1967, as amended, with that employer before he became a building worker, disregarding any period of that service in respect of which that person had taken long service leave.

(4) The Commissioner may, if he thinks fit, accept payments in discharge of a liability under this section by instalments over a period not exceeding five years.

24b. (1) The Commissioner may, by notice in writing, require any person—

Power to  
require  
information,  
etc.

(a) to furnish to him in writing, within the time specified in the notice, such information as he may require;

(b) to attend for the purpose of giving evidence before him at a time and place specified in the notice;

or

(c) to produce to him, within the time specified in the notice, such books, records or documents as he may require,

for the purpose of determining whether a person is liable to make contributions under this Act or determining the nature or extent of a person's liability under this Act.

(2) The Commissioner may—

(a) require that information furnished to him in writing be verified by statutory declaration;

or

(b) require any person attending before him to give evidence and, if he so requires, to give the evidence on oath (which he is hereby authorized to administer).

(3) A person shall not, without reasonable excuse, fail to comply with a requirement of the Commissioner under this section.  
Penalty: Five hundred dollars.

11. Section 24c of the principal Act is amended—

Amendment of  
s. 24c—  
Assessments.

(a) by striking out from subsection (1) the passage "total of the wages paid by the employer and that employer shall, subject to section 36b of this Act, be liable to pay to the Commissioner as a contribution the sum equal to the prescribed percentage of the amount of that assessment" and substituting the passage "amount payable by the employer under this Act";

(b) by striking out from subsection (2) the passage "and of the contribution to be given to the employer liable to make that payment" and substituting the passage "to be given to the employer to whom it relates";

and

(c) by striking out subsection (3) and substituting the following subsection:

(3) Where an employer is given notice in writing of an assessment under this section, the employer shall, within the period specified in the notice, pay to the Commissioner the amount specified in the notice as the amount assessed to be payable by him under this Act.

Penalty: Five hundred dollars.

Amendment of  
s. 24d—  
Recovery of  
contributions.

**12.** Section 24d of the principal Act is amended by striking out from subsection (2) the passage “of Stamps”.

Repeal of  
ss. 27 to 30 and  
substitution  
of new  
sections.

**13.** Sections 27 to 30 (inclusive) of the principal Act are repealed and the following sections are substituted:

Effective  
service before  
commencement  
of Long Service  
Leave (Building  
Industry) Act  
Amendment  
Act, 1982.

27. (1) The Board shall, before the expiration of the period of six months after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, in respect of each person known to the Board to have had an effective service entitlement immediately before that commencement pursuant to the provisions of this Act as in force before that commencement, determine the period of that effective service entitlement.

(2) The Board shall embody each determination made under subsection (1) in a certificate in the prescribed form and cause a copy of the certificate to be given to the person to whom it relates.

(3) Where a person—

(a) has not received a certificate under subsection (2) within the period referred to in subsection (1) and claims to have had an effective service entitlement referred to in subsection (1);

or

(b) has received a certificate under subsection (2) and disputes the determination of the Board contained in the certificate,

he may, after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, make an application in the prescribed manner and form to the Board for a determination or redetermination of his effective service entitlement (if any) immediately before that commencement.

(4) The Board may, upon an application under subsection (3), make a determination or redetermination of the applicant's effective service entitlement immediately before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982.

(5) The Board shall embody each determination or redetermination made under subsection (4) in a certificate in the prescribed form and cause a copy of the certificate to be given to the person to whom it relates.

(6) For the purposes of this Act after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982—

(a) a person shall be deemed to have had immediately before that commencement an effective service entitlement of the period (if any) determined or redetermined by the Board under this section or by the Tribunal on appeal under Part IVA against such a determination or redetermination;  
and

(b) except as provided in paragraph (a), effective service and effective service entitlements shall be determined without reference to periods of employment occurring before that commencement.

(7) An apparently genuine document purporting to be a certificate issued by the Board under this section shall, in the absence of proof to the contrary, be proof that the Board made a determination or redetermination under this section in the terms set out in the certificate.

28. (1) A person is entitled in respect of each period of service as a building worker occurring after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, to be credited with effective service calculated as follows:

Effective service after commencement of Long Service Leave (Building Industry) Act Amendment Act, 1982.

$$E = \frac{T.H.}{O.H.} \times \frac{12}{52}$$

where—

E = the period of effective service:

T.H. = the sum of the total number of hours worked by the person as a building worker during the period of service (disregarding any hours worked by him in any week in excess of ordinary hours) and the total number of ordinary hours for which he was absent from that work during that period as a result of allowable absences:

O.H. = the ordinary hours in relation to the period of service.

(2) Where, after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, a person becomes, during the course of employment by any person, a building worker in the employment of that person, he is entitled in respect of his service with that employer before he became a building worker to be credited with effective service calculated as follows:

$$E = C.S. \times \frac{AH}{O.H.} \times \frac{12}{52}$$

where—

E = the period of effective service:

C.S. = the period of his continuous service within the meaning of the Long Service Leave Act, 1967, as amended, with that employer before he became a building worker expressed in weeks to two decimal places, disregarding any period in respect of which he had taken long service leave:

AH = the average hours worked per week in the weeks in which the person worked in the period designated by the symbol "C.S.", disregarding any hours worked by him in any week in excess of ordinary hours:

O.H. = the ordinary hours in relation to the period designated by the symbol "C.S."

(3) Where a person is entitled to be credited with a period of effective service by virtue of subsection (2), he shall, if he ceases to be employed by the person referred to in that subsection, cease to be entitled to be credited with that period of effective service.

(4) Where a person who has an effective service entitlement of less than one hundred and twenty months is dismissed from employment as a building worker and the Board is satisfied, after affording the



former building worker and his former employer an opportunity to be heard, that he was dismissed from that employment as a result of serious and wilful misconduct, he shall cease to have that effective service entitlement.

(5) Where a person—

(a) has an effective service entitlement of less than eighty-four months;

(b) has not received, or become entitled to receive, a payment or leave referred to in section 34 (1) (a) (ii);

and

(c) is not employed as a building worker for a continuous period of eighteen months or more otherwise than on account of illness or injury,

he shall cease to have that effective service entitlement.

(6) Subsection (5) does not apply to a person who ceases to be a building worker but continues in the employment of the person by whom he was employed as a building worker if that person while in the same employment again becomes a building worker.

(7) Where a person becomes entitled to receive a payment from the Board under section 33 or 34, he shall cease to have the effective service entitlement that gave rise to that entitlement.

(8) Where—

(a) a person becomes entitled under the Long Service Leave Act, 1967, as amended, to a grant of long service leave, or a payment in lieu of long service leave;

and

(b) by virtue of section 35 (1), the continuous service of that person giving rise to that entitlement includes a period equal to the person's effective service entitlement at the time that he ceased to be a building worker,

that person shall cease to have that effective service entitlement.

Amendment of  
s. 31—  
Return of  
service.

**14.** Section 31 of the principal Act is amended by striking out from subsection (1) the passage "ordinary time worked, calculated in the prescribed manner," and substituting the passage "ordinary hours worked".

Repeal of  
ss. 32 to 36  
and  
substitution of  
new sections.

**15.** Sections 32 to 36 (inclusive) of the principal Act are repealed and the following sections are substituted:

Notices  
issued by  
Board  
setting out  
effective  
service.

**32.** (1) The Board shall, as soon as practicable after the thirty-first day of July, 1983, and each succeeding thirty-first day of July, in respect of each person known to the Board to have had an effective service entitlement during the year ending on the last preceding thirtieth day of June determine—

(a) the periods that the person became entitled to be credited with as effective service during that year;

and

(b) the effective service entitlement of that person as at that thirtieth day of June.

(2) The Board may—

(a) in relation to any person of its own motion at any time;

or

(b) upon application made in the prescribed manner and form by any person,

determine or redetermine the effective service entitlement of that person as at a time specified by the Board.

(3) The Board shall embody each determination made under subsection (1) or (2) in a certificate in the prescribed form and cause a copy of the certificate to be given to the person to whom it relates.

(4) An apparently genuine document purporting to be a certificate issued by the Board under this section shall, in the absence of proof to the contrary, be proof that the person to whom the certificate relates had, at the date specified in the certificate, the effective service entitlement specified in the certificate.

33. (1) Subject to subsection (2), where a building worker attains an effective service entitlement of one hundred and twenty months—

Payment for  
120 months  
effective  
service.

(a) the employer in whose employment the worker is when that effective service entitlement is attained, shall, as soon as practicable after that time, grant the worker leave to be absent from work for a period of thirteen weeks;

and

(b) the Board shall, when the worker takes that leave of absence, or that employment terminates, whichever first occurs, become liable to pay to the worker an amount equal to thirteen times the ordinary pay immediately before that time for work of the kind last performed by him as a building worker.

(2) Notwithstanding the provisions of subsection (1), where a worker referred to in that subsection continues in the same employment beyond the expiration of the period of twelve months from the time that effective service entitlement was attained without taking the leave of absence referred to in that subsection, the amount payable to the worker under that subsection shall—

(a) be an amount equal to thirteen times the ordinary pay at the expiration of that period of twelve months for work of the kind last performed by him as a building worker;

or

(b) if the Board, upon application made by the worker or the employer in the prescribed manner and form, thinks fit, be an amount equal to thirteen times the ordinary pay at a subsequent date fixed by the Board for work of the kind last performed by him as a building worker.

(3) No person shall during any period for which he is, pursuant to this section, absent from his employment, engage in any other employment for hire or reward.

Penalty: One hundred dollars.

(4) No person shall employ any other person for hire or reward during any period during which that other person is to his knowledge absent from other employment pursuant to this section.

Penalty: One hundred dollars.

Pro-rata  
payments for  
effective  
service less  
than 120  
months.

34. (1) Where, upon application made in the prescribed manner and form, the Board is satisfied—

(a) that a person has an effective service entitlement—

(i) of eighty-four months or more but less than one hundred and twenty months;

or

(ii) of less than eighty-four months and has—

A. received or become entitled to receive a payment under section 33 as in force before or after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982;

B. before the commencement of this Act, been granted or become entitled to be granted long service leave under the Long Service Leave Act, 1967, as amended, for service as a worker within the meaning of this Act;

or

C. before or after the commencement of this Act, been granted or become entitled to be granted long service leave under the Long Service Leave Act, 1967, as amended, for service otherwise than as a worker within the meaning of this Act where that service and the service giving rise to that effective service entitlement were parts of a continuous period of service in the employment of the same person;

and

(b) that the person has—

(i) died;

(ii) ceased to be a building worker and has attained the prescribed retiring age;

(iii) ceased to be a building worker and has a physical or mental disability such that he will be unable to work as a building worker for a continuous period of twelve months or more;

or

- (iv) ceased to be a building worker and has not worked as a building worker for a continuous period of twelve months or more from the time that he ceased to be a building worker,

the Board shall pay to that person or his personal representative, an amount calculated as follows:

$$A = \text{O.P.} \times E \times \frac{13}{120}$$

where—

A = the amount payable expressed in dollars and cents:

O.P. = the ordinary pay on the relevant day for work of the kind last performed by the person as a building worker:

E = the effective service entitlement of the person.

(2) In subsection (1) “the relevant day” means—

(a) in relation to a person who has died—the day on which he died;

(b) in relation to a person who has ceased to be a building worker and has attained the prescribed retiring age—the day on which he ceased to be a building worker or attained the prescribed retiring age, whichever last occurred;

(c) in relation to a person who has ceased to be a building worker and has a physical or mental disability of the kind referred to in subsection (1) (b) (iii)—the day on which the person made the application under subsection (1);

or

(d) in relation to a person who has ceased to be a building worker and has not worked as a building worker for a continuous period of twelve months or more from the time that he ceased to be a building worker—the day on which that period of twelve months expired.

(3) Where, upon an application under subsection (1), the Board determines that the applicant is not entitled to the payment sought, the Board shall give to the applicant notice in writing of its decision and the reasons for its decision.

35. (1) Where a person employed as a building worker ceases to be a building worker but continues in the employment of the person by whom he was employed as a building worker, the continuous service of that person for the purposes of the Long Service Leave Act, 1967, as amended, shall be deemed to include a period equal to the person's effective service entitlement at the time that he ceased to be a building worker.

Building  
worker  
continuing  
in same  
employment  
otherwise than  
as building  
worker.

(2) Subsection (1) does not apply if the former building worker receives a payment under this Act in respect of the effective service entitlement referred to in that subsection.

**(3) Where—**

(a) an entitlement to a grant of long service leave or payment in lieu thereof arises under the Long Service Leave Act, 1967, as amended, in relation to a former building worker referred to in subsection (1);

and

(b) by virtue of that subsection the continuous service of that person includes a period equal to his effective service entitlement at the time that he ceased to be a building worker,

the Board shall pay to the person liable to grant the leave or make the payment an amount calculated as follows:

$$A = \frac{O.P. \times N \times E}{C.S.}$$

where—

A = the amount payable expressed in dollars and cents:

O.P. = the ordinary pay, within the meaning of the Long Service Leave Act, 1967, as amended, of the former building worker last payable before the entitlement arose:

N = the number of weeks' leave required to be granted, or the number of weeks' leave in lieu of which payment is required to be made, under the Long Service Leave Act, 1967, as amended:

E = the effective service entitlement of the person at the time that he ceased to be a building worker:

C.S. = the period of the person's continuous service within the meaning of the Long Service Leave Act, 1967, as amended, expressed in months to one decimal place.

Amendment of  
s. 36a—  
The Appeal  
Tribunal.

**16.** Section 36a of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Tribunal shall be constituted of an industrial magistrate within the meaning of the Industrial Conciliation and Arbitration Act, 1972-1981, appointed by the Governor.

Repeal of  
s. 36b and  
substitution  
of new  
sections.

Appeal to  
Tribunal.

**17.** Section 36b of the principal Act is repealed and the following sections are substituted:

36b. (1) A person aggrieved by any assessment of the Commissioner or any determination or decision of the Board made under this Act may appeal to the Tribunal against the assessment, determination or decision.

(2) An appeal under this section must be instituted not later than thirty days after service upon the appellant of written notice of the assessment, determination or decision appealed against, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Tribunal may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the assessment, determination or decision appealed against, or substitute its own assessment, determination or decision for that made in the first instance;
- (b) remit the subject matter of the appeal for further consideration;
- (c) make any further or other order as to costs or any other matter that the case requires.

36ba. (1) The Tribunal may for the purposes of an appeal under this Part— Powers of Tribunal.

- (a) by summons signed by the Tribunal, require the attendance before the Tribunal of any person whom it thinks fit to call before it;
- (b) by summons signed by the Tribunal, require the production of any books, papers, documents or other thing;
- (c) inspect any books, papers, documents or other things produced before it, and retain them for such reasonable period as it thinks fit, and make copies of such books, papers or documents or any of their contents;
- (d) require a person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal or a person appearing before it relevant to any matter arising in the hearing (which oath or affirmation may be administered by the Tribunal);

or

- (e) require a person (other than counsel) appearing before the Tribunal (whether he has been summoned to appear or not) to answer relevant questions put to him by the Tribunal or by a person appearing before it.

(2) Subject to subsection (3), if a person—

- (a) who has been served with a summons to attend before the Tribunal neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers, documents or other thing, neglects or fails to comply with the notice;
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal, or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer a relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) A person shall not be obliged to answer a question put to him in proceedings before the Tribunal if the answer to the question would tend to incriminate him.

**Amendment of  
s. 37—  
Powers of  
Inspectors.**

**18. Section 37 of the principal Act is amended—**

- (a) by inserting at the foot of subsection (2) the following passage:  
Penalty: Five hundred dollars.;
  - (b) by inserting at the foot of subsection (3) the following passage:  
Penalty: Five hundred dollars.;
  - (c) by inserting at the foot of subsection (4) the following passage:  
Penalty: Five hundred dollars.;
- and
- (d) by inserting at the foot of subsection (5) the following passage:  
Penalty: Five hundred dollars.

**Repeal of  
ss. 38, 39  
and 40 and  
substitution  
of new  
sections.**

**19. Sections 38, 39 and 40 of the principal Act are repealed and the following sections are substituted:**

**Books and  
records to be  
preserved.**

38. (1) Every person who is an employer under this Act shall keep or cause to be kept in this State sufficient books and records to enable his liability in respect of contributions under this Act to be accurately calculated and shall preserve those books and records in this State for a period of not less than five years next following the completion of the transactions to which they relate.

Penalty: Five hundred dollars.

(2) This section shall not apply so as to require the preservation of any books or records—

(a) in respect of which the Commissioner has notified the employer that preservation is not required;

or

(b) of a company which has gone into liquidation and which has been finally dissolved.

**False or  
misleading  
information.**

**39. A person shall not—**

- (a) lodge any notice or return with the Commissioner;
  - (b) furnish any information, give any evidence or produce any book, record or document to the Commissioner;
  - (c) lodge any return with the Board;
- or
- (d) keep any record,

pursuant to this Act that is to his knowledge false or misleading in a material particular.

Penalty: Five hundred dollars.

**Service of  
documents.**

40. (1) Any certificate, notice, or other document required or authorized by this Act to be served or given by the Commissioner or the Board shall be deemed to have been duly served or given—

- (a) if it is left at the last known place of residence or business in or out of the State of the person, whether or not he is an

employer, on or to whom the certificate, notice or document is to be served or given or, in the case of an employer, at his address for service shown on the return last furnished by him with some person apparently in his employment;

or

(b) if sent by prepaid letter post, addressed to the person, whether or not he is an employer, on or to whom the certificate, notice or document is to be served or given at his last known place of residence or business in or out of the State or, in the case of an employer, at his address for service shown on the last return furnished by him.

(2) Service of a notice or document in accordance with subsection (1) (b) shall, in the absence of proof to the contrary, be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) Any notice, return or document of any kind to be given to or lodged with the Commissioner or the Board for the purposes of this Act may be given to or lodged with the Commissioner or the Board, by leaving it at the office of the Commissioner or the Board, with a person apparently employed in the administration of this Act.

40a. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

Continuing offences.

(a) shall be liable, in addition to the penalty otherwise applicable to that offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence;

and

(b) shall, if the act or omission continues after he is convicted, be guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to that further offence, to a penalty for each day during which the act or omission continued after that conviction of not more than one-tenth of the maximum penalty prescribed for that offence.

(2) Where an offence against a provision of this Act consists of an omission to do something that is required to be done, the omission shall, for the purposes of subsection (1) of this section, be deemed to continue for so long as the thing required to be done remains undone after the expiration of the period for compliance with the requirement.

20. Section 42a of the principal Act is amended—

Amendment of s. 42a—  
Evidentiary provisions.

(a) by inserting before paragraph (a) of subsection (1) the following paragraph:

(aa) the person named in the certificate was at the time or during the period specified in the certificate an employer;

(b) by striking out subsection (2) and substituting the following subsections:



(2) In any proceedings against a person for failing or neglecting duly to lodge a return with the Commissioner, a certificate in writing purporting to be signed by the Commissioner certifying that the return has not been received from that person by any person authorized by the Commissioner to receive returns, shall, in the absence of proof to the contrary, be taken as proof that the defendant has failed or neglected duly to lodge the return.

(2a) In any proceedings against a person for failing or neglecting duly to lodge a notice or return with the Board, a certificate in writing purporting to be under the seal of the Board certifying that the notice or return has not been received from that person by any person authorized by the Board to receive notices or returns, shall, in the absence of proof to the contrary, be taken as proof that the defendant has failed or neglected duly to lodge the notice or return.;

and

(c) by inserting in paragraph (a) of subsection (3) after the word "certificate" the passage "within the period specified in the certificate".

Amendment of  
s. 43—  
Regulations.

**21.** Section 43 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) require persons who are employers to register with the Board;
- (b) require employers or former employers to notify the Board or the Commissioner of specified matters;
- (c) prescribe penalties, not exceeding five hundred dollars, for any breach of, or failure to comply with, the regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor