

RULES OF THE

CONSTRUCTION
INDUSTRY

LONG SERVICE FUND

as at 31 August 2021

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RULES OF THE CONSTRUCTION INDUSTRY LONG SERVICE FUND

PART 1 - INTERPRETATION

1. INTERPRETATION

1.1 Definitions

In these rules unless the contrary intention appears:

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

'Age for Retirement' in relation to an Employee or Self-Employed Person means:

- (a) in a case where the employee is engaged in relevant employment for which an age for retirement is prescribed by an Award or fixed by the terms of his contract of employment, the age so prescribed or fixed; or
- (b) in the case of any other employee, 55 years and over;

'Australian Business Register' means the register of Australian businesses as provided by the Australian Government.

'Award' means a law of Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law.

'Board' means the board of Directors of the Trustee;

'Business' includes any trade, process, profession or occupation or any part thereof;

'Commencement Date' means the date of execution of the Trust Deed;

'Construction Industry' means:

- (a) any industry in which any or all of the work described in Division E of the Standard Industrial Classification is performed; or
- (b) any industry in which any of the work described in the following classes of Division C of the Standard Industry Classification is performed which involves the construction and installation or fixing of goods, materials or products for use in or in connection with that industry :

Class

2323 Wooden Structural Fitting & Component Manufacturing

2635 Concrete Product Manufacturing

2911 Prefabricated Metal Building Manufacturing

2919 Prefabricated Building Manufacturing n.e.c.

‘Construction Work’ means work carried out in the Construction Industry including erection, installation, reconstruction, re-erection, renovation, alteration, demolition, maintenance and repairs;

‘Continuous Service’ in relation to an Employee, has the meaning given in Rule 16;

‘Contribution Rate’ means a set rate equal to one-sixtieth of \$720.00 per week or as determined from time to time by Special Resolution of the Board;

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

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

‘Director’ means a director of the Trustee;

‘Effective Date’ means the day that the Act is proclaimed;

‘Employee’ means a person who is, or has been, employed in Relevant Employment and includes any person engaged whether:

- (i) under a contract of service;
- (ii) under a contract that is wholly or principally for the labour of the person;
- (iii) under a contract, whether or not a contract of employment, by any labour hire agency or group training scheme;

‘Employer’ in relation to any Relevant Employment in which an Employee is or has been engaged, means his or her employer in that employment;

‘Fund’ means the Construction Industry (Long Service) Fund which is established under the Trust Deed;

‘Long Service Leave’ means long service leave which an Employee is entitled to under these Rules;

‘Long Service Contribution’ means a contribution paid into the Fund by any Self-Employed Worker in accordance with these Rules;

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

‘Long Service Charge’ means a contribution paid into the Fund by any Employer in accordance with these Rules;

‘Minister’ means:

- (a) at any time prior to the Effective Date, the Minister of the Tasmanian Government who is allocated responsibility for the *Long Service Leave (Construction Industry) Act 1971*; and
- (b) as from and including the Effective Date, the Minister of the Tasmanian Government who is allocated responsibility for the Act;

‘Ordinary Pay’:

- (a) for the purposes of Rule 10, has the meaning given in Rule 10.6; and
- (b) for the purposes of Part 6 of these Rules, has the meaning given in Rule 13; and
- (c) for the purposes of Rule 22.1, has the meaning given in Rule 10.6;

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

‘Pay Day’, means the day on which an Employee was paid for the work done by the Employee;

‘Prescribed’ means prescribed by the Board;

‘Prescribed Percentage’ has the meaning given in Rule 10.4;

‘Prescribed Period’ has the meaning given in Rule 17.9;

‘Previous Fund’ means the Long Service Leave (Construction Industry) Fund established under the *Long Service Leave (Construction Industry) Act 1971* as in force immediately before its repeal;

‘Reciprocal Arrangement’ has the meaning given in Rule 19.3;

‘Register of Employers’ means the register of Employers in the Construction Industry, kept in accordance with Rule 8;

‘Register of Employees’ means the register of Employees in the Construction Industry, other than Self-Employed Workers, kept in accordance with Rule 9;

‘Register of Self-Employed Workers’ means the register of Self-Employed Workers in the Construction Industry, kept in accordance with Rule 9A;

‘Registration Number’ means in relation to an Employee, the registration number ascribed to him or her by the Trustee by the issue of a registration card pursuant to Rule 25;

‘Relevant Employment’ means employment on a permanent or casual basis of an employee by an Employer for the purposes of the carrying out by the employer of any

Work in the Construction Industry on the site of the Work or, if he is not employed on the site of the Work, is employed by that employer in making, preparing, storing, or transporting goods or material for use in that Work, but does not include:

- (i) employment of an employee by an employer who is not engaged in the Construction Industry in the maintenance of plant and equipment notwithstanding the nature of the work done by the person is similar to Work in the Construction Industry; or
- (ii) a period of employment of less than one full day's duration.

'Relevant Employment Period' means the period of Relevant Employment in respect of which a Long Service Payment arises;

'Self-Employed Worker' means any bona fide self-employed person:

- (a) that carries on Construction Work for more than one day; and
- (b) prior to becoming a self-employed person was an Employee on whose behalf Long Service Charges were made;

'Sole Trader - Existing' means a person that provides services to another person or business in the Construction Industry other than as an Employee and was registered on the Australia Business Register prior to 1 February 2021.

'Sole Trader - New' means a person that provides services to another person or business in the Construction Industry other than as an Employee and was registered on the Australia Business Register after 31 January 2021.

'Sole Trader Communication' means the process of notifying a Sole Trader – Existing or Sole Trader - New in accordance with Rule 12.A regarding the recognition of Relevant Employment;

'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 5 out of 6 of the A Class Directors and B Class Directors;

'Trust Deed' means the trust deed between The Honourable Raymond John Groom being and as Minister for Workplace Standards (as 'Settlor') and TASBUILD LIMITED ACN 082 066 939 (as 'Trustee') establishing the Fund, and to which these Rules are scheduled as Schedule 2;

'Trustee' means the trustee of the Fund created by the Trust Deed;

'Unrecorded Service' means the period of time an Employee carried out Relevant Work in the Construction Industry but that period of time was not previously recorded by the Trustee as Relevant Work;

'Work' means work carried out in the Construction Industry;

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 includes 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 a Special Resolution of the Board and made with the prior written approval of the Minister.

4. OVERRIDING RULE ONCE THE ACT COMES INTO FORCE

- 4.1 As from the Effective Date, the provisions of these Rules may, be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part by a unanimous resolution of the Board.
- 4.2 If the Board cannot unanimously resolve to alter the provisions of these Rules in accordance with Rule 4.1 then as from the Effective Date, the provisions of these Rules may, subject to the Act, be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part by a Special Resolution of the Board and approved at a meeting of Employers and Employees.
- 4.3 For the purpose of Rule 4.2 a Special Resolution of the Board shall be deemed to have been approved at a meeting of Employers and Employees provided that:
- (a) 50% of the Employers present at the meeting vote for approval of the resolution; and
 - (b) 50% of Employees present at the meeting vote for approval of the resolution.
- 4.4 The Trustee shall cause notice of the meeting of Employers and Employees to be given to all Employers and Employees either personally or by sending it by post or hand to:
- (a) in the case of an Employer the last known address of that Employer as supplied to or ascertained by the Trustee; and

- (b) in the case of an Employee the last known address of that Employee as supplied to or ascertained by the Trustee, and

notice will be deemed to have been effected:

- (c) where sent by post and properly addressed, postage prepaid, three days after the date of its posting; or
- (d) where delivered personally or by hand, at the time of delivery.

4.5 For the purposes of Rule 4.4, the Trustee may rely upon the information held by the Trustee in the Registers kept by the Trustee under Rules 8 and 9 for the purpose of identifying persons who are Employers and Employees.

4.6 Any notice under this Rule shall specify the time, place and purpose of the meeting and detail the Special Resolution.

4.7 Despite the provisions of Rule 4.4, notice may be given by newspaper advertisement in the manner set out in cases where the Deed so provides.

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 Previous Fund.

PART 3 - THE FUND

6. FUND

6.1. There is to be paid into the Fund:

- (a) the Long Service Charges paid to the Trustee under these Rules in respect of an Employee;
- (b) the Long Service Contributions paid to the Trustee under these Rules in respect of a Self-Employed Worker;
- (c) the proceeds from Fund investments; and
- (d) other money paid into the Fund under these Rules and the Act.

6.2. There is to be paid out of the Fund:

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

7. ACTUARIAL INVESTIGATIONS

7.1 Investigations as to the state of sufficiency of the Fund must be made at such intervals as the Trustee determines, but at least one investigation must be made into the Fund at or before the expiration of each period of three years from the Commencement Date.

7.2 Investigations under this Rule 7 must be made by an actuary or two or more actuaries appointed by the Trustee.

7.3 The actuary or actuaries must report to the Trustee the result of his or their investigations and must state whether any reduction or increase is in his or their opinion necessary in the rates of contribution to the Fund and may include in that report a statement of any changes which the actuary or actuaries consider could be made to improve the efficiency of the administration of the Fund.

PART 4 - REGISTERS

8. REGISTER OF EMPLOYERS

- 8.1. The Trustee shall keep the Register of Employers.
- 8.2. The Trustee must enter in the Register of Employers the name of any Employer who registers with the Trustee.
- 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 EMPLOYEES

- 9.1. The Trustee shall keep the Register of Employees.
- 9.2. The Trustee must enter in the Register of Employees the name of any Employee whom the Trustee reasonably believes is an Employee who performs Construction Work and who has applied to the Trustee to be registered.
- 9.3. The Trustee may remove from the Register of Employees the name of any Employee where the Employee has been absent from the Construction Industry for a continuous period of 4 years or more. The Trustee will be entitled to treat an Employee as absent for 4 years or more in the event that no contributions have been received into the Fund in respect of that Employee for that period of time.

9A. REGISTER OF SELF-EMPLOYED WORKERS

- 9A.1. The Trustee shall keep a Register of Self-Employed Workers.
- 9A.2. The Trustee must enter in the Register of Self-Employed Workers the name of any Self-Employed Worker whom the Trustee reasonably believes is a Self-Employed Worker who performs Construction work and who has applied to the Trustee to be registered.
- 9A.3. The Trustee may remove from the Register of Self-Employed Workers the name of any Self-Employed Worker where the Self-Employed Worker has been absent from the Construction Industry for a continuous period of 4 years or more. The Trustee will be entitled to treat a Self-Employed Worker as absent for 4 years or more in the event that no contributions have been received into the Fund in respect of that Self-Employed Worker for that period of time.

9B. TRANSFER OF MEMBERS BETWEEN REGISTERS

- 9B.1. Where appropriate, the name of any Self-Employed Worker who has become an Employee of an Employer may, with the consent of the Trustee be transferred from the Register of Self-Employed Workers to the Register of Employees.
- 9B.2. Where appropriate, the name of any Employee who is a Self-Employed Worker may, with the consent of the Trustee be transferred from the Register of Employees to the Register of Self-Employed Workers.

- 9B.3 Where a person has had periods of Relevant Employment and has also contributed as a Self-Employed Worker:
- (a) for the purposes only of determining years of Relevant Employment, the period during which the person contributed as a Self-Employed Worker under rule 18B shall count;
 - (b) for the purposes only of determining years of carrying out Construction Work, years of Relevant Employment shall count;
 - (c) the entitlements under rules 17 and 18B shall be determined on a pro-rata basis by reference to the period of Relevant Employment and the period for which contributions as a Self-Employed Worker were made;
 - (d) the period during which a person contributed whilst Self-Employed before 1 July 2004 shall count as Relevant Employment for the purposes of rule 17.

9C. RELEVANT EMPLOYMENT

- 9C.1 Relevant Employment recorded in a members account is restricted to a maximum annual total of 260 days per year except in leap years or years where timing of pay periods means an additional pay period may occur in a year resulting in additional Relevant Employment days being recognised in a year.
- 9C.2 To have unrecorded Relevant Employment recognised, Employees are required to complete an Unrecorded Service form which must be supported by the provision of evidence as specified in the Form and supporting documentation.
- 9C.3 The review of Unrecorded Service for an applicant will be limited to a period of 10 calendar years prior to the date of receipt of the Unrecorded Service form.

PART 5 - CONTRIBUTIONS

10. LONG SERVICE CHARGE

10.1 Payment of Long Service Charge

Every Employer shall in respect of every Employee employed by the Employer in Relevant Employment pay to the Trustee a Long Service Charge:

- (a) at the end of the month, after the month the Long Service Charge was issued, except where the Employer has not lodged the relevant return in accordance with the Rules, then the Long Service Charge is to be paid at the end of the month the Long Service Charge was issued;
- (b) on a quarterly basis in accordance with Rule 10.2;
- (c) as determined by the Trustee; or
- (d) until such time as the Trustee determines to introduce a charge by way of the imposition of a levy system in accordance with section 7 of the Act.

10.2 Payment of Long Service Charge on a quarterly basis

An Employer may apply to the Trustee to pay the Long Service Charge under this Rule on a quarterly basis where the Employer contributions either:

- (a) are less than \$500.00 per month; or
- (b) relate to five or less employees; and
- (c) is to support alignment with the quarterly completion of a Business Activity Statement by a book keeper.

Any Employer approved for quarterly payment of the Long Service Charge may have their approval revoked at any time where the Employer is non-compliant with the Rules.

10.3 Amount of Long Service Charge and Imposition of Levy

- (a) The amount of the Long Service Charge under Rule 10.1 shall be the prescribed percentage as determined from time to time by Special Resolution of the Directors of the Trustee ('Prescribed Percentage').
- (b) The Trustee may at any time determine to introduce a charge by way of the imposition of a levy in accordance with section 7 of the Act.
- (c) For Relevant Employment Periods prior to and including 30 June 2006 where an Employer has not registered with the Trustee as required under the Act any accrued liability at the date of registration is calculated using the Employee's weekly Ordinary Pay rate at the date of registration with the Trustee and is

payable at a rate equal to one-sixtieth of the length of the period of employment to which the accrued liability relates.

- (d) For Relevant Employment Periods on or after 1 July 2006 where an Employer has not registered with the Trustee as required under the Act any accrued liability at the date of registration is calculated using the employee's weekly Ordinary Pay rate at the date of registration with the Trustee and is payable at a rate equal to one-fortieth of the length of the period of employment to which the accrued liability relates.
- (e) A registered Employer is required to lodge with the Trustee the relevant monthly or quarterly return for their Employee(s) by the 14th day of the following month to which the returns refer.
- (f) Where the registered Employer has not lodged the relevant return for their Employee(s) with the Trustee within 7 days of the date determined under Rule 10.3(e); or, any other outstanding returns for their Employee(s) which were outstanding at the date this Rule takes effect, the prescribed Long Service Charge will be a rate equal to one-sixtieth of the period of service for which those returns are in arrears multiplied by the daily wage rate of the Employee(s) for periods of relevant service prior to and including 30 June 2006, or the prescribed Long Service Charge will be a rate equal to one-fortieth of the period of service for which those returns are in arrears multiplied by the daily wage rate of the Employee(s) for periods of relevant service on or after 1 July 2006.
- (g) Where the registered Employer has not paid the Trustee the prescribed Long Service Charge for their Employee(s) within 30 days of the date of issue of the relevant Tax Invoice; or, the prescribed Long Service Charge for their Employee(s) which had accrued at the date this Rule takes effect, the prescribed long service charge will be amended to be rate equal to one-sixtieth of the period of service for which those charges are in arrears multiplied by the daily wage rate of the Employee(s) for periods of relevant service prior to and including 30 June 2006, or the prescribed Long Service Charge will be amended to be rate equal to one-fortieth of the period of service for which those charges are in arrears multiplied by the daily wage rate of the Employee(s) for periods of relevant service on or after 1 July 2006.

10.4 Amount of Long Service Charge - Prescribed Percentage

- (a) Effective 1 September 1999 up to and including 30 June 2006, the Prescribed Percentage is 0.7 percent of the Ordinary Pay of an Employee.
- (b) Effective 1 July 2006 up to and including 31 March 2009, the Prescribed Percentage is 0.3 percent of the Ordinary Pay of an Employee.
- (c) Effective 1 April 2009 up to and including 30 September 2009, the Prescribed Percentage is 0.6 percent of the Ordinary Pay of an Employee.
- (d) Effective 1 October 2009 up to and including 30 September 2017, the Prescribed Percentage is 2.0 percent of the Ordinary Pay of an Employee.

- (e) Effective 1 October 2017 and until otherwise determined by the Board, the Prescribed Percentage is 1.8 percent of the Ordinary Pay of an employee.
- (f) The Trustee shall give all affected Employers notice in writing of any increase in the Prescribed Percentage, not less than 2 months prior to the change taking effect

10.5 Compliance with Legal Obligations

When setting a Long Service Charge or imposing a Levy, the Trustee will, in addition, apply all taxes or charges required to be applied to meet its legal obligations e.g. GST.

10.6 Ordinary Pay

For the purposes of Rule 10, 'Ordinary Pay' of an Employee, other than a Self-Employed Worker, means the remuneration the Employee receives when the Employee is employed in Relevant Employment. The remuneration for the period includes any allowance payable by the Employer in respect of tools and equipment required by the Employee in the Work but does not include:

- (a) payment for overtime;
- (b) disability allowance being any allowance payable to an Employee as a consequence of his working in specified circumstances, being circumstances that involve, or are likely to involve, special danger, hardship, or inconvenience to the Employee, except where it is reasonably to be expected that persons engaged in the type of employment in which the Employee is ordinarily engaged would be entitled to that allowance for the whole, or the greater portion, of the time in which they are so engaged;
- (c) if the Employee is expected to work away from the Employee's usual place of residence, the value of, or any payment in respect of, board and lodging;
- (d) the value of, or any payment payable in respect of, meals or refreshments;
- (e) payment in respect of travel to or from, or in the course of Work;
- (f) payment payable in respect of the use of a vehicle;
- (g) payment payable by way of bonus;
- (h) annual leave loading;
- (i) unused annual leave or rostered days off paid out on termination; and
- (j) redundancy payments.

11 TRUSTEE MAY ESTIMATE CHARGES

- 11.1 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 11.1) is Construction Work; and
- (b) that the Employer is liable to pay Long Service Charges to the Trustee in respect of the work performed by Employees; and
- (c) that those Long Service Charges have not been paid,

and where there is insufficient information available to the Trustee to enable the amount of the Long Service Charges due in respect of such work to be calculated in accordance with Rule 10, the Trustee may estimate and make an assessment of the amount of Long Service Charges that in its opinion are due from the Employer in respect of the work performed by Employees.

11.2 The Trustee may estimate and make an assessment under Rule 11.1, notwithstanding that there is insufficient information available to the Trustee to enable the Trustee to identify the Employee who performed the Construction Work for an Employer.

11.3 In making an assessment under Rule 11.1, 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 by an Employee.

11.4 The Trustee shall cause notice of any assessment made under this Rule 11 to be served on the Employer to whom the assessment relates.

11.5 The Employer to whom the assessment relates may within a period of 28 days from the date of service of the notice referred to in Rule 11.4, lodge with the Trustee a notice in writing objecting to the assessment and setting out the grounds of such objections.

11.6 The Trustee shall consider every such written objection and may affirm or vary the assessment objected to.

11.7 In considering an objection to an assessment under this Rule 11.7 the Trustee shall have regard to the written objection of the Employer and may otherwise inform itself in such manner as it thinks fit, but except as provided by this Rule 11.7 and Rule 26 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.

11.8 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 11.4, the Trustee shall certify its assessment and subject to Rule 11.9 the certified assessment shall be deemed to be the amount of Long Service Charges in respect of the relevant work due to and recoverable by the Trustee in accordance with these Rules.

- 11.9 The Trustee shall cause notice of the certification under Rule 11.8 of an assessment to be sent to the Employer to whom the assessment relates.

12. APPEALS AGAINST CERTIFIED ASSESSMENTS

An Employer to whom a certified assessment under Rule 11 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 27.

12A. SOLE TRADER STATUS

- 12A.1 The Trustee will advise (**Initial Contact**) Sole Traders that they must complete a Claim for Unrecorded Service as per Rule 9C for eligible Relevant Employment to be considered.
- 12A.2 Subject to Rule 12A.3, the Trustee will not recognise any Unrecorded Service as Relevant Employment if the Sole Trader has not contacted the Trustee within 3 months of the Initial Contact.
- 12A.3 If the Sole Trader does not receive the Sole Trader communications and can provide evidence that the contact details used for the Sole Trader communications were not current at the time of communication then they have the option to contact the Trustee and request recognition of Unrecorded Service be considered.
- 12A.4 If the Sole Trader has notified the Trustee that they have elected to opt out of having their Eligible Unrecorded Service recognised (**Sole Trader Contact**) and any subsequent claim for recognition of Relevant Employment can only be on a prospective basis from the date of receipt of the written advice of the Sole Trader's decision to have Relevant Employment recognised.
- 12A.5 The Trustee will notify all new Sole Trader's listed on the Australian Business Register and identified as being involved in the Construction Industry of their requirement to advise the Trustee that they want recognition for undertaking Relevant Employment. If the Sole Trader fails to do so they will lose recognition of past Relevant Employment. If a subsequent request is received for recognition of Relevant Employment from the Sole Trader, the Trustee will only recognise Relevant Employment from the date of receipt of the request.

For the purpose of this Rule 12A, acceptable forms of communication are at least two of the following:

- (a) letter;
- (b) email;
- (c) phone; and
- (d) text message.

PART 6 - ENTITLEMENTS AND PAYMENTS

13. 'ORDINARY PAY'

13.1. In this Part 6 of these Rules, 'Ordinary Pay' of an Employee, other than a Self-Employed Worker, in respect of whom any entitlement to Long Service Payment means the remuneration the Employee is reasonably expected to receive if the Employee were to continue to be employed in the Relevant Employment on a full-time basis during the period for which the entitlement covers. Assuming he continued in the Relevant Employment throughout the period including any allowance payable by the Employer in respect of tools and equipment required by the Employee in the Work but does not include

- (a) payment for overtime;
- (b) disability allowance being any allowance payable to an Employee as a consequence of his working in specified circumstances, being circumstances that involve, or are likely to involve, special danger, hardship, or inconvenience to the Employee, except where it is reasonably to be expected that persons engaged in the type of employment in which the Employee is ordinarily engaged would be entitled to that allowance for the whole, or the greater portion, of the time in which they are so engaged;
- (c) if the Employee is expected to work away from the Employee's usual place of residence, the value of, or any payment in respect of, board and lodging;
- (d) the value of, or any payment payable in respect of, meals or refreshments;
- (e) payment in respect of travel to or from, or in the course of Work;
- (f) payment payable in respect of the use of a vehicle;
- (g) payment payable by way of bonus;
- (h) casual or annual leave loadings loading;
- (i) unused annual leave or rostered days off paid out on termination; and
- (j) redundancy payments.

13.2. If the remuneration payable to an Employee:

- (a) is dependent on the results achieved by the Employee; or
- (b) is not fixed,

the remuneration for the purpose of calculating Ordinary Pay at any point of time is determined by taking the average of the remuneration paid to the Employee during:

- (c) the 3 months in Relevant Employment immediately prior to that point in time; or

- (d) the actual period of Relevant Employment with an Employer if that period was less than 3 months.
- 13.3. If an Employee dies, any variation in the Employee's remuneration that would have come into effect after the date of the Employee's death is not included in the calculation of the Employee's ordinary pay.
- 13.4. Notwithstanding any other Rules in this part, if the remuneration of an Employee is less or more than the remuneration of another Employee employed by the same Employer in substantially the same employment, the Trustee may determine the remuneration of the employee for the purpose of these Rules.

13A ABNORMAL WAGE VARIATIONS

13A.1 For the purposes of this rule an 'abnormal wage variation' may be due to the reason for the variation or the size of a variation which results in an Employee's weekly 'Ordinary Pay' being increased or decreased during any twelve-month period by an amount greater than the average movement in wages for employees of a similar classification during the same period.

- (a) Where an employee has had an 'abnormal wage variation' the 'Long Service Payment' for the period of the 'abnormal wage variation' will be calculated on the basis of the 'Pay' the employee received during the 'abnormal wage variation' period, adjusted, as appropriate based on the annual actuarial assessed wage increase of the Fund, to a present day value, and further adjusted in accordance with Rule 13.1, and multiplied by the amount of long service accrued during the 'abnormal wage variation'.

The rate of long service accrual is 0.8667 weeks for every 260 days of employment in 'relevant employment where employment occurred prior to 01 January 2006 or 1.3 weeks for every 260 days of employment in 'relevant employment for employment on or after 1 January 2006.

- (b) For the purposes of this Rule where an employee accrues an entitlement to Long Service that includes a period where an 'abnormal wage variation' applied and that 'abnormal wage variation' **continues** at the time of taking the entitlement the following will apply:
 - (1) The weekly Ordinary Pay that applied before the 'abnormal wage variation' will be adjusted, based on the annual actuarial assessed wage increase of the Fund, to a present day value.
 - (2) The adjusted rate in Rule 13A.1(b)(1) above will be compared to the employee's 'abnormal wage variation' at the time taking the entitlement, and where the variation is less than 10 percent (plus or minus), the current 'abnormal wage variation' will be used to calculate the entitlement for the whole period of Long Service accrued during the period.
 - (3) Where the variation is greater than 10 percent (plus or minus), the adjusted rate in Clause 13A.1(b)(1) above will be used to calculate the entitlement

for the period of Long Service accrued during the period before the 'abnormal wage variation' applied.

- (4) The period where the 'abnormal wage variation' applied will be calculated in accordance with Rule 13A.1(a) above.
- (c) For the purposes of this Rule where an employee accrues an entitlement to Long Service that includes a period where an 'abnormal wage variation' applied and that 'abnormal wage variation' **ceased** prior to the time of taking an entitlement, and the Ordinary Pay at that time was **lower** than the 'Pay' that applied during the 'abnormal wage variation', then the following will apply:
- (1) The weekly Ordinary Pay that applied before the 'abnormal wage variation' will be adjusted, based on the annual actuarial assessed wage increase of the Fund, to a present day value, except where the Ordinary Pay that applied before the variation was the same as the Ordinary Pay that applied immediately after the variation.
 - (2) The adjusted rate in Rule 13A.1(c)(1) above will be compared to the employee's Ordinary Pay at the time taking the entitlement, and where the variation is less than 10 percent (plus or minus), the current Ordinary Pay rate will be used to calculate the entitlement for the period of Long Service accrued during the period where the 'abnormal wage variation' did not apply. The current Ordinary Pay rate will also apply where the Ordinary Pay rate was the same before and after the variation.
 - (3) Where the variation is higher, the period after the period of 'abnormal wage variation' will be treated as if it was a period of 'abnormal wage variation', calculated in accordance with Rule 13A.1(a) above.
- (d) For the purposes of this Rule where an employee accrues an entitlement to Long Service that includes a period where an 'abnormal wage variation' applied and that 'abnormal wage variation' **ceased** prior to the time of taking an entitlement, and the Ordinary Pay at that time was **higher** than the 'Ordinary Pay' that applied during the 'abnormal wage variation', then the following will apply:
- (1) The weekly Ordinary Pay that applied before the 'abnormal wage variation' will be adjusted, based on the annual actuarial assessed wage increase of the Fund, to a present day value, except where the Ordinary Pay that applied before the variation was the same as the Ordinary Pay that applied immediately after the variation.
 - (2) The adjusted rate in Rule 13A.1(d)(1) above will be compared to the employee's Ordinary Pay at that time and where the variation is less than plus or minus 10 percent the current Ordinary Pay rate will be used to calculate the entitlement for the period of Long Service including any period of 'abnormal wage variation'. The current Ordinary Pay rate will also apply where the Ordinary Pay rate was the same before and after the variation.

- (3) Where the variation is higher the period after the period of 'abnormal wage variation' will be treated as if it was a period of 'abnormal wage variation'. The remaining period/s including the period where the 'abnormal wage variation' applied will be calculated in accordance with the relevant parts of this Rule.

13A.2 Wage variations that occurred during a period where the employee was employed as an apprentice or a trainee are not considered to be periods of 'abnormal wage variation'

14. DETERMINATION OF ORDINARY PAY WHERE ORDINARY PAY EXCESSIVE

14.1 Where an entitlement to Long Service Payment accrues in respect of an Employee, other than a Self-Employed Worker, and it appears to the Trustee that his Ordinary Pay calculated in accordance with Rule 13 is excessive by reason of:

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

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

14.2 Any notice under Rule 14.1 shall specify a time within which the Employee or their personal representative may make a written submission to the Trustee that the Employee's Ordinary Pay as calculated in accordance with Rule 13 is not excessive by reason of either of the matters referred to in Rule 14.1.

14.3 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 an Employee calculated in accordance with Rule 13 is not excessive by reason of either of the matters referred to in Rule 14.1(a) or (b),

the Trustee may determine the Ordinary Pay of the Employee to be paid in respect of or in lieu of a Long Service Payment under these Rules at such amount (being less than the Ordinary Pay as calculated in accordance with Rule 13) as the Trustee thinks fit.

14.4 In making a determination under this Rule 14.4 the Trustee shall have regard to any written submission and may otherwise inform itself in such manner as it thinks fit, but except as provided by this Rule 14.4 the Trustee is not required to give to any person

notice of or an opportunity to answer or to be heard in relation to any matter taken into account by the Trustee in making the determination.

- 14.5 The Trustee shall cause notice of its determination to be served on the Employee or their personal representative.
- 14.6 An Employee or their personal representative may, within fourteen days after the date of service of the notice under Rule 14.5, appeal against the determination in accordance with Rules 26 and 27.
- 14.7 The Ordinary Pay of an Employee as determined under this Rule 14 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 Payment.

15 DETERMINATION OF ORDINARY PAY WHERE IT APPEARS INSUFFICIENT

- 15.1 Where an entitlement to Long Service Payment or pay in lieu of Long Service Payment accrues in respect of an Employee, other than a Self Employed Worker, and it appears to the Trustee that his Ordinary Pay calculated in accordance with Rule 13 is insufficient by reason of either of the matters referred to in Rule 14.1 (a) or (b) the Trustee may determine the Ordinary Pay of the Employee 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 13) as the Trustee thinks fit.
- 15.2 The Trustee shall cause notice of its determination to be served on the Employee or their personal representative.
- 15.3 The Ordinary Pay of an Employee as determined under this Rule 15.3 shall, notwithstanding anything to the contrary in these Rules, be the Ordinary Pay to be paid in respect of or in lieu of Long Service Leave under these Rules.

16 WHAT CONSTITUTES TERMINATION OF RELEVANT EMPLOYMENT

- 16.1 For the purposes of these Rules the occurrence of any of the following circumstances shall be deemed not to have terminated any Relevant Employment in which the Employee was engaged at the time of the occurrence and service in the Construction Industry shall be deemed to have continued notwithstanding the occurrence of the circumstance:
- (a) the taking of any annual leave or Long Service Leave;
 - (b) any continuous absence from work on account of illness or injury which occurred during a period when the Employee's employment was in the Construction Industry if the Employee does not engage in any employment for hire or reward and if the absence is certified to be necessary by a registered medical practitioner within the meaning of the *Medical Practitioners Registration Act 1996*;
 - (c) any absence from work of an Employee 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) complying with any requirement or exercising any right to appear before such a court, body or person as is referred to in Rule 16.1(c)(ii), whether as a party to any proceedings or as a witness or otherwise;
- (d) absence from work on a public holiday in accordance with the terms and conditions of the Employee's service,

but does not include:

- (i) any interruption of the employment of the Employee arising directly or indirectly from an industrial dispute until such time as the employee is lawfully terminated;
- (ii) any standing down of an Employee on account of slackness of trade, if the Employee returns to work in the Relevant Employment within 14 days;

16.2 Where an Employee is whether before or after the commencement of this Rule 16.2 transmitted from an Employer (in this Rule 16.2 called the 'transmittor') to another Employer (in this Rule 16.2 called the 'transmittee') and the Employee 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 Employee shall be deemed not to have been broken by the transmission;
- (b) the period of employment which the Employee has had with the transmittor or any prior transmittor shall be deemed to be employment of the Employee with the transmittee.

16.3 In Rule 16.2, 'transmission' includes transfer conveyance assignment or succession whether by agreement or by operation of law; and 'transmitted' has a corresponding interpretation.

16.4 Any period of service as a member of the defence 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 Employee concerned was last employed before he commenced to serve as a member.

17 DETERMINATION OF ENTITLEMENT OF EMPLOYEE

17.1 (a) On completion prior to and including 31 December 2005 of 15 years of Relevant Employment of an Employee, other than a Self-Employed Worker,

there arises an entitlement to Long Service Payment for the 15 years under these Rules.

- (b) Effective from 1 January 2006 on completion of 10 years of Relevant Employment of an Employee, other than a Self-Employed Worker, there arises an entitlement to Long Service Payment for the 10 years under these Rules.
- (c) On completion of every 5 years of Relevant Employment of an Employee, other than a Self-Employed Worker, after:
 - (i) the first 15 years of Relevant Employment where that Relevant Employment was completed on or before 31 December 2005;
 - (ii) the first 10 years of Relevant Employment where that Relevant Employment was completed after 31 December 2005,

there arises an entitlement to Long Service Payment under these Rules, for the Relevant Employment Period commencing from the day after the end of the previous Relevant Employment Period.

17.2 There arises an entitlement to Long Service Payment under these Rules where the period of Relevant Employment of an Employee, other than a Self-Employed Worker, is at least 7 years and Relevant Employment in which the Employee, other than a Self-Employed Worker, is engaged:

- (a) is terminated by the Employer otherwise than for the serious and wilful misconduct of the employee; or
- (b) is terminated by the Employee on account of a domestic or other pressing necessity of such a nature as to justify the termination of the employment,

and, during the Prescribed Period, the Employee, other than a Self-Employed Worker, is unable to obtain Relevant Employment.

17.3 For the purposes of Rule 17.2 an Employee, other than a Self-Employed Worker, shall be regarded as being unable to obtain Relevant Employment only if:

- (a) he is making all efforts reasonable in the circumstances to obtain such employment;
- (b) there is a domestic or other pressing necessity of such a nature as to justify his or her not seeking or not engaging in such employment.

17.4 Effective from 1 January 2006 an entitlement to Long Service Payment under these Rules arises where the period of Relevant Employment of an Employee, other than a Self-Employed Worker, is at least 55 days and the Relevant Employment in which he is engaged is terminated on or after 1 January 2006 on account of illness or incapacity of the Employee of such a nature that the employee is permanently unable to continue working in the construction industry.

17.5 An entitlement to Long Service Payments under this Rule arises on the death of a person to whom this Rule applies whether or not at the time of his death he was engaged in Relevant Employment.

- 17.6 A person to whom Rule 17.5 applies is a person:
- (a) Prior to 1 January 2006 whose period of Relevant Employment is at least 7 years; and
 - (b) Effective from 1 January 2006 whose period of Relevant Employment is terminated on or after 1 January 2006 and is at least 55 days; and
 - (c) whose last employment before his or her death was Relevant Employment.
- 17.7 Effective from 1 January 2006 an entitlement to Long Service Payment under these Rules arises where the period of Relevant Employment of an Employee, other than a Self-Employed Worker, prior to 1 January 2006 is at least 7 years and on or after 1 January 2006 is at least 2 years and Relevant Employment in which the Employee, other than a Self-Employed Worker, is engaged is terminated on, or at any time after, his or her attaining the Age for Retirement.
- 17.8 For the purposes of Rule 17.7, an Employee, other than a Self-Employed Worker, who terminates his employment on or after becoming eligible for a service pension under Section 38 of the *Veterans' Entitlements Act 1986* of the Commonwealth, shall be deemed to have attained the Age for Retirement.
- 17.9 In this Rule 17 "Prescribed Period", when used in relation to the termination of Relevant Employment in which an Employee, other than a Self-Employed Worker, was engaged, means the period of 2 months following that termination, or, if the Employee, other than a Self-Employed Worker, dies during that period, the period from that termination until his death.
- 17.10 Prior to and including 31 December 2005 the amount of the Long Service Payment to which an Employee, other than a Self-Employed Worker, is entitled in respect of an entitlement arising under these Rules in respect of any period of Relevant Employment prior to and including 31 December 2005 is an amount equivalent to the Ordinary Pay of the Employee, other than a Self-Employed Worker, in the Relevant Employment in which he was engaged on such date as he may notify to the Trustee, being a date not earlier than the end of that period of Relevant Employment, for a period commencing on the date so notified and of a length equivalent to one-sixtieth of the length of the period of Relevant Employment in respect of which the entitlement to the benefit arose.
- 17.11 On or after 1 January 2006 the amount of the Long Service Payment to which an Employee, other than a Self-Employed Worker, is entitled in respect of an entitlement arising under these Rules in respect of any period of Relevant Employment on or after 1 January 2006 is an amount equivalent to the Ordinary Pay of the Employee, other than a Self-Employed Worker, in the Relevant Employment in which he was engaged on such date as he may notify to the Trustee, being a date not earlier than the end of that period of Relevant Employment, for a period commencing on the date so notified and of a length equivalent to one-fortieth of the length of the period of Relevant Employment in respect of which the entitlement to the benefit arose.
- 17.12 A Long Service Payment to which an entitlement has arisen under these Rules shall, on application made to the Trustee in the prescribed manner, be paid by the Trustee

to the Employee, other than a Self-Employed Worker, or, if he has died, his legal personal representatives.

- 17.13 Every Employee, other than a Self-Employed Worker, is entitled to a Long Service Payment in respect of Continuous Service in the Construction Industry (whether before or after the commencement of the Trust Deed or these Rules).
- 17.14 Notwithstanding anything contained in this Rule 17, an Employee is not entitled to receive a payment from the Trustee in respect of a period of Relevant Employment for which the Employee is entitled to any benefit or entitlement for long service other than a benefit determined under the rules of the Fund.
- 17.15 Notwithstanding anything contained in this Rule 17 the Board may in all the circumstances determine that there arises an entitlement to Long Service Payment under these Rules and the amount of the benefit and when the benefit is to be paid.
- 17.16 The Trustee may determine that an Employee has no entitlement to a Long Service Payment where a Court has to the Trustees satisfaction, determined no legal obligation to pay Long Service Charges in respect of that Employee. In the event this occurs, the Trustee will be entitled to treat the Employee as though no contributions have been received into the Fund in respect of that Employee for that period of time. In those circumstances, the Employee will have no entitlement to any payment from the Fund.

17A ENTITLEMENTS FOR EMPLOYEE WITH SUBSTANTIAL CONTROL

17A.1 Rule 17A.2 applies if an Employee:

- (a) becomes entitled to a Long Service Payment under these Rules; and
- (b) has or had substantial control over an Employer liable to pay a Long Service Charge under these Rules.

17A.2 The Trustee, in its absolute discretion, is not required to pay an Employee's Long Service Payment if there is any outstanding Long Service Charges payable by an Employer that the Employee has or had substantial control over at any time during the period referable to that outstanding Long Service Charge, or in the 12 months prior to that period.

17A.3 For the purposes of this Rule, an Employee will have "substantial control" over an Employer where:

- (a) the Employee was the Employer in his or her personal capacity;
- (b) in the case of an Employer that is a partnership, that the Employee was a partner in that partnership;
- (c) in the case of an Employer that is a corporation (however described), the:
 - (i) Employee was a director of that corporation;_or
 - (ii) Employee and the corporation are Associated Entities (as defined in section 50AAA of the Corporations Act); or

- (iii) Employee Controls (as defined in section 50AA of the Corporations Act) the corporation; or
- (d) in any other case, where the Trustee determines after providing the Employee reasonable opportunity to be heard.

17A.4 Rule 17A.3 does not limit the circumstances in which an Employee may have substantial control over an Employer.

18 DATE OF TERMINATION OF RELEVANT EMPLOYMENT

- 18.1 Relevant Employment of an Employee, other than a Self-Employed Worker, with an Employer shall, for the purpose of these Rules be deemed to have terminated when the Employee ceases to be employed by that Employer or, although remaining in the employment of that Employer, he ceases to be engaged by him in Relevant Employment.
- 18.2 A reference in this Rule to the termination of Relevant Employment shall be construed as including, if the Employee dies while he is engaged in that employment, reference to his death.

18A. SELF EMPLOYED WORKER ACCOUNTS

- 18A.1 The Trustee shall keep an account for each Self-Employed Worker showing the following amounts:
 - (a) Long Service Contributions made by the Self-Employed Worker in accordance with Rule 18B; and
 - (b) any income determined in accordance with clause 3 of the Trust Deed credited (or debited) to the account.
- 18A.2 All amounts credited to the account of a Self-Employed Worker pursuant to Rule 18A.1 shall form part of a distribution reserve pursuant to clause 3.1(b) of the Trust Deed until the Self-Employed Worker becomes entitled to such amounts in accordance with Rule 18C.1.
- 18A.3 The Trustee shall be permitted to terminate a Self-Employed Worker's account if:
 - (a) a Long Service Contribution has not been paid for two or more consecutive quarters in accordance with these Rules; or
 - (b) the Self-Employed Worker has been absent from the Construction Industry for a continuous period of 4 years or more; or
 - (c) the Self-Employed Worker has reached 10 years of combined service as an Employee and Self-Employed Worker.

18B. SELF-EMPLOYED WORKER CONTRIBUTIONS

- 18B.1 Payment of Long Service Contributions

Every Self-Employed Worker may pay to the Trustee on a voluntary basis a Long Service Contribution:

- (a) on a quarterly basis; or
- (b) as determined by the Trustee.

18B.2 Amount of Long Service Contribution

- (a) The amount of the Long Service Contribution under Rule 18B.1 shall be the Contribution Rate.
- (b) The Board shall review the Contribution Rate annually at the June Board Meeting.
- (c) The Trustee shall give all affected Self-Employed Workers notice in writing of any increase in the Contribution Rate, not less than 2 months prior to the change taking effect.

18B.3 Invoices

- (a) Long Service Contributions made in accordance with Rule 18B.1 must be invoiced by the Trustee to the Self-Employed Worker.
- (b) Service will only be recorded in the Self-Employed Worker account once the Self-Employed Worker has paid the contributions in the invoice specified in Rule 18B.3(a) to the Trustee.

18C. SELF-EMPLOYED WORKER ENTITLEMENTS

18C.1 A Self-Employed Worker shall be entitled to the amount standing in his or her account under Rule 18A.1 on the making of a demand for payment not earlier than the first to occur of:

- (a) Completion of 10 years of carrying out Construction Work,;
- (b) Completion of 2 years of carrying out Construction Work, and on attaining the Age for Retirement;
- (c) Completion of at least 7 years of carrying out Construction Work and the Self-Employed Worker has had to cease carrying out Construction Work for at least 2 months on account of being unable to obtain Construction Work;
- (d) Completion of at least 55 days of carrying out Construction Work, and he or she is suffering from illness or incapacity of such a nature that the self-employed worker is unable to continue working in the Construction Industry;
- (e) Completion of 55 days of Carrying out Construction Work, and on death of the Self-Employed Worker whether or not at the time of his or her death they carried out Construction Work but only if whose last gainful activity before his or her death was Construction Work.

18C.2 For the purposes of Rule 18C.1(c), a Self-Employed Worker shall be regarded as being unable to obtain Construction Work only if:

- (a) he or she is making all efforts reasonable in the circumstances to obtain such work;
- (b) there is domestic or other pressing necessity of such a nature as to justify his or her not seeking or not engaging in such work.

18C.3 A Long Service Payment to which an entitlement has arisen under these Rules shall, on application made to the Trustee in the prescribed manner, be paid by the Trustee to the Self-Employed Worker, or, if he or she has died, his or her legal personal representatives.

18C.4 Subject to meeting the requirements of Rule 18C.1 and 18C.2 and the Self-Employed Worker providing the relevant payment details to the Trustee, the Trustee must pay the aggregate amount in the:

- (a) Self-Employed Worker's account under Rule 18A.1; and
- (b) any Employee account in the name of the Self-Employed Worker.

18C.5 Following a payment under Rule 18C.4, the Self-Employed Worker will not be permitted to register Self Employed Worker account for the receipt of Long Service Contributions.

18C.6 If the amount in the Self-Employed Worker's account meets the requirements of unclaimed money in accordance with the *Unclaimed Money Act 2005* (Tas), the Trustee shall have the power to transfer unclaimed money to the Department of Treasury and Finance.

18D. SELF-EMPLOYED WORKER REFUNDS

18D.1 Prior to becoming entitled to a payment under Rule 18C.1 and subject to Rule 18D.2, any Self-Employed Worker shall be entitled to a refund of contributions paid into the Fund under Rule 18B upon making a written request, and receiving written consent from, the Trustee. Interest accrued on the Self-Employed Worker's account will be forfeit.

18D.2 Any Self-Employed Worker account that has recorded a refund under Rule 18D.1 shall not be entitled to receive future Long Service Contributions in respect of those periods for which they obtained such refunds.

19. RECIPROCAL ARRANGEMENTS

19.1 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.

- 19.2 Notwithstanding Rule 19.1 the Minister shall before entering into a Reciprocal Arrangement consult with the Trustee and obtain the Trustee's consent to the Reciprocal Arrangement.
- 19.3 A reciprocal arrangement ('Reciprocal Arrangement') may relate to Long Service Payment, 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 Payments or other payments which the Minister thinks are necessary or convenient.
- 19.4 If a person has been paid a Long Service Payment 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 Tasmania the Trustee must pay to the equivalent authority the Prescribed Amount.
- 19.5 For the purposes of Rule 19.4 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 Tasmania bears to the total period of service in respect of which the payment was made.
- 19.6 The payment by the Trustee is subject to any terms and conditions which are specified in the Reciprocal Arrangement.
- 19.7 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.

20. PAYMENT FROM FUND IN RESPECT OF LEAVE ACCRUED UNDER PREVIOUS FUND

- 20.1 Notwithstanding anything to the contrary in these Rules, no payment shall be made from the Fund in relation to any entitlement which is by these Rules deemed to have accrued before the Effective Date where an equivalent entitlement accrued under and an equivalent payment was made from the Previous Fund but nothing in this Rule 20.1 shall affect:
- (a) the liability of the Employer to make any payment not made; or
 - (b) the liability of the Trustee to make any payment from the Fund in respect of an entitlement which accrued prior to the Effective Date but for which no payment was made from the Previous Fund.
- 20.2 Notwithstanding anything to the contrary in these Rules, where:
- (a) an Employee has completed 15 years' Relevant Employment in the Construction Industry before the Effective Date; and
 - (b) his entitlement under these Rules is deemed to have accrued before the Effective Date, or
 - (c) the Board has made a determination pursuant to Clause 17.14

payment may be made in accordance with Rule 17 to the Employee or his personal representative from the Fund in relation to that entitlement.

21. FURTHER PROVISIONS FOR PAYMENTS IN RESPECT OF LONG SERVICE PAYMENT

21.1 Any Long Service Payment that accrues or is by these Rules deemed to have accrued under these Rules on or after the Effective Date shall be made from the Fund.

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

21.3 Where:

(a) any person is given a long service payment to which he is entitled otherwise than under these Rules; and

(b) the Employer who gives the payment or any other person employing the Employee during the period of employment giving rise to the entitlement has paid Long Service 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 Payment (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 Employees, such lesser sum as is determined by the Trustee for the purposes of this Rule 21) as the part of the period of employment in respect of which Long Service Charges were paid by the Employer or any person so employing the Employee bears to the whole period of employment giving rise to the entitlement.

21.4 The Trustee is not required to make a reimbursement under this Rule 21 unless the Employer makes an application for that reimbursement within seven years of the making of the payment for which the Employer is entitled to be reimbursed.

PART 7 - PROVISION OF INFORMATION TO TRUSTEE

22. LONG SERVICE PAYMENT RETURNS

22.1 Long Service Leave Returns

Every Employer who employed an Employee to perform Construction Work must deliver or cause to be delivered to the Trustee a return, in a format approved by the Trustee, showing the following information with the payment to be made under Rule 10.3:

- (a) with respect to every Employee employed to perform Construction Work during that period:
 - (i) the Employee's name and registration number (if any); and
 - (ii) the amount of ordinary pay received by the Employee during that period; and
 - (iii) the period of the Employee's Relevant Employment in the Construction Industry during the period commencing with the day following the last date of the previous return and ending with the last Pay Day in the period to which the return relates; and
 - (iv) the period of, and reasons for, any absence or interruption of any kind mentioned in Rule 16.1 during the period commencing with the day following the last Pay Day in the period preceding the period to which the return relates and ending with the last Pay Day in the period to which the return relates; and
- (b) the total amount of Long Service Charges payable by the Employer in respect of Employees employed to perform Construction Work during that period; and
- (c) in the case of an Employee who commenced employment during that period, the name of that Employee and the date of commencement of employment; and
- (d) with respect to every Employee who ceased employment during that period:
 - (i) the Employee's name and Registration Number (if any); and
 - (ii) the date of cessation of employment; and

22.2 Return where no Construction Employee employed

An Employer or a person who has not during a Prescribed Period employed any Employee 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.

23. TRUSTEE MAY REQUIRE INFORMATION

- 23.1 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 Charges or entitlement to Long Service Payment under these Rules.
- 23.2 A notice under Rule 23.1 must specify the time (being not less than 28 days) and place at which the required information must be produced.
- 23.3 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 such 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.
- 23.4 Information disclosed to the Trustee by any Employee 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 23.2 does not apply to information which the Trustee is required by law to disclose, or information which is public knowledge.

24. EMPLOYER REQUIRED TO KEEP CERTAIN RECORDS

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

- (a) the Employee's name, address and Registration Number (if any); and
- (b) the number of working days for which the Employee was engaged on Construction Work; and
- (c) the period of any absence or interruption; and
- (d) the date of the Employee's commencement and termination of employment; and
- (e) the total amount of remuneration received by the Employee; and
- (f) the amount paid in respect of annual leave not taken when the Employee's employment was terminated.

25. REGISTRATION CARDS

The Trustee may issue a registration card which contains a Registration Number to each Employee within 3 months after the Employee's name has been entered in the Register of Employees kept under Rule 9.

PART 8 - GENERAL

26. MEANING OF CONSTRUCTION WORK

26.1 The Trustee may determine

Subject to Rules 11 and 26.4, 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 a person is or is not an Employer engaged in the Construction Industry;

In the exercise of this discretion, the following guidelines not rule shall apply:

- (i) *Where an employer engages in relevant construction work on an irregular basis and such activity constitutes on average less than 10% of the total hours worked by all employees in the business, then subject to (ii) below, such employers shall not be required to join and contribute to the fund.*
- (ii) *Notwithstanding (i) above, in circumstances where an employer engages employees to work exclusively or predominately in relevant employment, then such employees shall be registered with the fund and contributions made on their behalf. In this context 'predominately' shall mean more than 90% of the total hours worked by an employee. This guideline shall apply notwithstanding that the predominate activity carried on by the employer is other than construction work.*
- (c) that a person is or is not an Employee employed in the Construction Industry;
or
- (d) otherwise concerning a person's obligations or entitlements under these Rules (including obligations or entitlements under these Rules arising by virtue of the Act).

26.2 Trustee may determine on own motion or on application

Subject to Rule 27, the Trustee may make a decision under Rule 26.1 either of its own motion or upon the application of an Employee or Employer, or a person on behalf of an Employee or Employer.

26.3 Prescribed Form

An application for a decision by the Trustee under paragraphs (a), (b), (c) or (d) of Rule 26.1 must be in accordance with Form 1 of 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 26.

26.4 Trustee to give reasonable opportunity for hearing

The Trustee must not make the final decision under this Rule 26 unless it has provided each Employee 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 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 Employee or Employer whom the Trustee has reason to believe will be affected by that decision.

26.5 Meaning of 'reasonable opportunity'

Without limiting the meaning of the expression 'reasonable opportunity', the Trustee will for the purpose of Rule 26.4 have provided a person a reasonable opportunity to make submissions in respect of a final decision under this Rule 26 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.

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

26.6 Notice of decisions

The Trustee must within 14 days of making a decision under this Rule 26, 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 14 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.

26.7 Decision of Trustee not invalidated

A decision by the Trustee under this Rule 26 will not be invalidated because the Trustee has failed to comply with Rules 26.5 or 26.6 in respect of every Employee or Employer affected by that decision, provided that the Trustee substantially complied with Rule 26.5 in relation to those Employees or Employers whom the Trustee ought reasonably to have been aware would be affected by the decision.

26.8 Date Persons notified

Each person to whom the Trustee issues a notice under Rule 25.6(a) is deemed to have been notified of the Trustee's decision on the 3rd Business Day after the notice was posted by the Trustee.

27. OBJECTIONS

27.1 Persons may object

An Employee or Employer who is dissatisfied with any decision made by the Trustee under Rule 26 may, within 30 days of being notified under Rule 26 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.

27.2 Trustee to consider objections

The Trustee must consider an objection received under this Rule 27 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.

27.3 Arbitration

If a person ('Objector') who has lodged an objection with the Trustee under Rule 27.1 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 14 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 President of the Law Society of Tasmania or his nominee;
- (c) the arbitration must be conducted in accordance with and subject to the provisions of the *Commercial Arbitration Act 2011*;
- (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.

27.4 Notice of decisions

The Trustee must within 14 days of the arbitrator's making a decision under this Rule 27, 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.

28. KEEPING OF BOOKS AND RECORDS

- 28.1 An Employer must keep such books and records as may be Prescribed containing such particulars as may be Prescribed relating to Employees 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.
- 28.2 The Trustee will not pursue the penalty provisions under Section 8(2) of the Act where the Employer can demonstrate a record of compliance in respect to:
- (a) Registration of all employees engaged by the employer in the construction industry;
 - (b) Payment of the Long Service Charge in accordance with Rule 10.

29. 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.

30. REFUNDS

- 30.1 Where the Trustee finds in any case that Long Service Charges have been overpaid or an amount has been paid on account of an employee of an Employer that is not entitled to a Long Service Payment ('Excess Contribution'), the Trustee may, provided the amount has not been paid to the employee, or as otherwise provided under these Rules, within seven years after the Excess Contribution is made, make a refund to that Employer of that Excess Contribution.
- 30.2 Where the Employer has paid the Trustee an amount on account of GST on the Excess Contribution the Trustee will refund the amount paid and provide the Employer with an adjustment note.
- 30.3 Where an Employer that has made an Excess Contribution has not received a refund under Rule 30.1 and the employee of that Employer in respect of whom the contributions have been made is not eligible under the Rules to a Long Service Payment has completed a period of service equivalent to a period of Relevant Employment that would give rise to an entitlement to Long Service Payment under these Rules, the employee although not entitled to any payment from the Fund, may be paid an amount equivalent to Long Service Payment as if that employee has been engaged in Relevant Employment for the Relevant Employment Period, if and only if, in the absolute discretion of the Trustee, the Trustee decides to do so.

31. TRANSITIONAL MATTERS

- 31.1 Subject to Rule 31.4, any Employer who has any outstanding Liability to the Previous Fund shall:

- (a) pay the outstanding Liability over a 3 year period provided that the Employer pays at least one third of the Liability in each Year; or
 - (b) pay the outstanding Liability in respect of each Employee at the time that the Employee leaves the Relevant Employment with the Employer.
- 31.2 Notwithstanding Rule 31.1 any Employer who has any outstanding Liability shall pay the outstanding Liability where the Employee has already received an entitlement from the Previous Fund.
- 31.3 For the purposes of Rules 31.1, 31.2 and 31.3:
- (a) "Liability" includes any obligation or contribution arising under the Previous Fund;
 - (b) "Year" means the financial year commencing the 1st July and ending 30th June of each calendar year;
 - (c) "Previous Fund" means the Long Service Leave (Construction Industry) Fund established under the repealed *Long Service Leave (Construction Industry) Act 1971*.
- 31.4 An Employer shall pay to the Fund any outstanding Liability upon any Employee making a claim for an entitlement under these Rules and such entitlement is approved by the Trustee.
- 31.5 Notwithstanding Rules 31.1, 31.2 and 31.4, any Employer who has any outstanding liability to the Previous Fund shall pay the outstanding liability as and when determined by the Trustee.

FORM 1

To: The Trustee
The Construction Industry Long Service Fund

I
(Name)

.....
(Address)

apply under Rule 26 of the Rules of the Construction Industry Long Service Fund for a decision of the Trustee that the following work:

- is/is not Construction Work

My present status is that of:

- Employee
- Employer
- person acting on behalf of one of the above

The grounds on which a decision is sought are:

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

- (1) Description of type of work engaged in by the Employer 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 Employee is paid (if any);
- (5) Description of duties of Employee;
- (6) Address for service of notices;
- (7) If an Employer application, names and addresses of Employees;
- (8) Description of places at which work is performed.

Additional information in support of the application (if any)

Signature of Applicant..... Date / /