

## Late objections to the accuracy of a notice of service credits, backdating of a registration date and crediting of service.

<b>Scheme:</b>	Building and Construction Industry
<b>Policy Name:</b>	Late objections to the accuracy of a notice of service credits, backdating of a registration date and crediting of service.
<b>Policy Owner:</b>	Senior Manager, Customer Service
<b>Trim Number:</b>	A1549-81
<b>Review Date:</b>	1 May 2024
<b>Policy Commencement Date:</b>	1 May 2021

## Purpose

This Policy is made by the Long Service Corporation and may be amended, revoked or replaced at any time without notice. It is intended that this Policy will guide decision-making but will be applied flexibly. The terms of the applicable legislation take priority over this Policy.

This policy applies to the decisions by the Corporation or its delegates under the *Building and Construction Industry Long Service Payments Act 1986* to:

1. Decide whether special circumstances warrant the consideration of an objection to the accuracy of a notice under paragraph 25(4)(b) of the Act;
2. Decide whether special circumstances warrant the fixing of a registration date earlier than 2 years before a request was made, under subsections 18(2) and (3) of the Act;
3. After making a decision, if in favour of the person under s 25(4)(b) or 18(3), crediting service.

## Policy

### 1. Late notice of objection to the accuracy of a notice of service credits

When assessing whether to consider any late notice of objection to the accuracy of a notice of service credits, it **must be determined on its individual merits**.

- 1.1. A worker can lodge an objection to the accuracy of a notice of service credits (issued by the Corporation under s 25(1)) up to 2 years after the date of the work, activity or circumstance to which the objection relates.
- 1.2. Where an objection is lodged later than the 2 years provided, the Corporation may consider the objection only if **special circumstances** warrant it doing so.

### 2. Earlier registration date (Backdating)

Earlier registration for the purposes of backdating service **must be determined on its individual merits**.

- 2.1. A person registered as a worker can request a date of registration that is earlier than the date on which they applied for registration or were registered.
- 2.2. However, if the person has requested a date that is earlier than 2 years before the request was made, the Corporation must not fix that date unless satisfied that **special circumstances** warrant it doing so.

### 3. Crediting service

- 3.1. After the Corporation has decided that special circumstances warrant considering an objection lodged outside 2 years (under s 25(4)(b) or fixing a date of registration earlier than 2 years before the request was made (under s 18(3)) the Corporation may then need to consider whether to accept a claim for service credits.
- 3.2. Service will only be credited if **suitable evidence** supporting the crediting of service for the period in question has been provided to the Corporation.

## Definitions

**Eligible work** for this policy is defined as *building and construction work* performed in New South Wales as defined within the Act.

**Special circumstances** exist where there is a special feature of the case which warrants the exercise of discretion in recognising a registration date that is earlier than two years before the request was made.

The existence of special circumstances should explain why the worker did not either make an objection to the accuracy of a notice of service credits or apply for an earlier date of registration earlier.

Special circumstances may include but are not limited to:

- Non-English speaking background and low literacy
- Employer failure to comply with legislative requirements (this does not include Working Directors)
- Occupational isolation (work alone or in family business)
- Accountant did not advise responsibilities or obligations (self-employed, this does not include Working Directors)
- Illness of the worker, an immediate family member or carer's responsibilities.

**Suitable evidence** for employees are documents that substantiate the worker's entitlement to service credits for the period in question by showing both employment details (employer name and period of engagement) and that the person was engaged in eligible work (type of work performed). Only approved documents will be considered by the Corporation as suitable evidence. **The approved list of suitable evidence** may be amended from time to time; the current list forms part of this policy as **Appendix A**.

**Suitable evidence** for contractors is a completed and appropriately verified *Self Employed Worker Certificate of Service* (SEWCOS) for the period claimed.

## Legislation

The following provisions of the Act are relevant for the application of this Policy. However, staff should refer to the full text of the legislation when making a decision.

### **Building and Construction Industry Long Service Payments Act 1986 No 19**

#### **3 Definitions**

**building and construction work** means work in the building and construction industry performed in New South Wales, being:

- (a) work carried out under a contract of employment for which a rate of pay is fixed by an award prescribed by the regulations, or
- (b) work:
  - (i) carried out under a contract that is not a contract of employment, and
  - (ii) that would, if it had been carried out under a contract of employment, be work for which a rate of pay was fixed by an award prescribed by the regulations, or
- (c) the work of a person who, under a contract of employment:
  - (i) directly supervises work of the kind referred to in paragraph (a) or (b), or
  - (ii) is a clerk of works.

## **18 Date of registration**

- (1) The date on which a person becomes a registered worker is:
  - (a) if the person applied to be registered as a worker—the date on which application for the person’s registration was lodged with the Corporation, or
  - (b) if the Corporation registered the person on its own initiative—the date of that registration.
- (2) Despite subsection (1), the Corporation may, on its own initiative or at the request of a person who is registered as a worker, fix, in respect of any person or class of persons, a date of registration that is earlier than the date referred to in that subsection.
- (3) However, if a person who is registered as a worker has requested an earlier date in accordance with subsection (2), the Corporation must not fix a date that is earlier than 2 years before the request was made, unless the Corporation is satisfied that special circumstances warrant it doing so.
- (4) On the fixing of a date in accordance with subsection (2):
  - (a) the person or class of persons for whom the date is fixed are taken for all purposes to have been registered on and from that date, and
  - (b) service credits to which the person or those persons are entitled under this Act may be credited to the person or those persons in respect of any subsequent dates.

## **25 Notice to registered workers of service credits**

- (1) The Corporation shall, as soon as practicable after 31 July in each year, serve on each person who on 30 June in that year was a registered worker a notice:
  - (a) specifying the number of days’ service in the building and construction industry, as shown in the register of workers, with which that registered worker has, in accordance with this Division, been credited in respect of the year ended on that 30 June, and

- (b) specifying the total number of days' service in the building and construction industry with which that registered worker has, in accordance with this Division, been credited.
- (2) Any person on whom a notice is served under subsection (1) may, within 6 months after the service of the notice, lodge with the Corporation an objection against the accuracy of the notice in relation to the number of days specified in the notice pursuant to subsection (1) (a).
- (3) The Corporation shall determine an objection lodged pursuant to subsection (2) and the determination of the Corporation shall, subject to any determination made by the Committee in an appeal under Part 6, be final and conclusive.
- (4) Where no objection is lodged pursuant to subsection (2) in relation to a notice or any objection so lodged is determined under subsection (3), the Corporation shall not consider any other objection relating to the accuracy of the notice unless:
- (a) the objection is lodged with the Corporation within 2 years after the date of the work, activity or circumstance to which the objection relates, or
- (b) the Corporation considers that special circumstances warrant its doing so.

## **Related policies**

- Method of verification of claims for service credits
- Employee and self-employed service advices/claims lodged late
- Verification of SEWCOS by persons other than tax agents
- Lodgement of SEWCOS by Business Activity Statement (BAS) agents
- Certification of Supporting Documentation

## Appendices

### Appendix A - Suitable evidence list for crediting service

Proof of employment documentation needs to show evidence of employment covering the full period(s) of service and that the person was engaged in eligible work. Only approved documents listed below as primary and secondary evidence will be accepted by the Corporation.

All applications that require suitable evidence must **include at least one document from the primary evidence** list. If the primary evidence document does not show all of the following, then the applicant must provide further primary or secondary evidence documents from the approved list to show the missing requirements:

1. work performed during the period applied for,
2. employment through the period applied for,
3. the employer details, and
4. the worker details.

### Example of suitable evidence

*A worker, whose tax return doesn't clearly indicate the work performed, would need to supply other documentation from the suitable evidence list which includes the type of work they did over the entire period.*

**Primary evidence:**

Document type	Requirements and explanatory notes
Individual Tax returns	<p>The individual income tax return will usually show all four requirements needed to support the request.</p> <p><i>Please note: Notice of Assessments and company tax returns are NOT acceptable.</i></p> <p>To be independently relied upon documents supplied must contain your Employers name or ABN, your details, start and end dates and description of work performed. You may be required to provide further documentation if work type not clearly defined e.g. main occupation listed as brick laying or plumbing.</p>
Letter of offer of employment	<p>Document supplied must confirm employment, the type of building and construction work performed and specify employment details.</p> <p>Further Evidence is required to show the end date.</p>
Apprenticeship papers	<p>To be independently relied upon documents supplied must contain your Employers name, ABN, your details, start and confirmed end date and description of work performed. * This only supports the period of the apprenticeship. TAFE certificates or Transcripts not acceptable.</p>
Payslips (the first and last payslip for each financial year)	<p>To be independently relied upon documents supplied must contain your Employers name, ABN, your details, start and end dates and description of work performed. *</p>
Contract of employment	<p>Document supplied must contain Employers Name, ABN, worker's details, start date and any proposed end dates.</p> <p>Worker must provide secondary proof of the contract being fulfilled to cover the requirements of being engaged in the work, such as bank statements. Worker will also need to provide evidence if/when contract was ended.</p>

\* If any of the required information is missing, further documentation must be supplied to address gaps in information. For example, a document that shows dates of employment but does not show what work was performed, would need supporting suitable evidence to show what type of work was performed throughout the same period.

## Secondary Evidence:

Document type	Requirements and explanatory notes
Income statement from MyGov	Need supporting documents to verify work performed as this is not contained within these documents.
Centrelink employment separation certificate	Need supporting documents to verify work performed as this is not contained within these documents.
Workers compensation documents	Can be used if employer failed to lodge service for this period of employment.
Bank statements with entries of pay (must cover the entire employment period applied for and show the employers name)	Can be used to support employment dates if employer failed to lodge this with the Corporation.
Statutory Declarations	Statutory Declarations made under the Oaths Act 1900 may be used as secondary evidence only.

## Log of changes - Suitable evidence list

Change made	Name of Approver	Name of Person making change	Date changed
Created initial list of documents.  Primary: service docs, letter of offer, apprenticeships, payslips, contract of employment, Tax return.  Secondary: Payment summary, Centrelink employment separation cert, Workers comp, Bank statements.	Wil Hart	Wil Hart	26/11/2020
Added Statutory Declarations to secondary evidence.	Wil Hart	Wil Hart	22/03/2021
Minor adjustment to payslips and bank statements	Wil Hart	Wil Hart	26/05/2021
Changes to the wording on POE	Tess Parker	Jai Pearce	3/05/2022

## DOCUMENT CHANGE CONTROL

Version	Date	Authors	Summary of Changes
1.0	26/11/2020	William Hart	Draft new policy
1.0.1	22/03/2021	William Hart	Amendments from Industry committee, Internal subject matter experts and Legal feedback
1.02	14/12/2021	Stuart Irving	Amendment of the definition of 'Special Circumstances' – with the minor update approved by Manager Customer Service

## DOCUMENT SIGN-OFF

Name (Position)	Action	Date
Manager Customer Service	Endorsed/ <del>Not Endorsed</del>	22/03/2021
LSC Director, Kathy Skuta	Approved / <del>Not Approved</del>	22/03/2021