



Australian Capital Territory

# **Long Service Leave (Building and Construction Industry) Act 1981**

**A1981-23**

**Republication No 7**

**Effective: 2 June 2005 – 6 July 2005**

Republication date: 2 June 2005

Last amendment made by A2005-20

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Long Service Leave (Building and Construction Industry) Act 1981* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 June 2005. It also includes any amendment, repeal or expiry affecting the republished law to 2 June 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Long Service Leave (Building and Construction Industry) Act 1981

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Australian Capital Territory

# **Long Service Leave (Building and Construction Industry) Act 1981**

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An Act to provide for long service leave for employees and contractors in the building and construction industry, and for other related purposes

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R7  
02/06/05

Long Service Leave (Building and Construction Industry)  
Act 1981

page 1

Effective: 02/06/05-06/07/05

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Long Service Leave (Building and Construction Industry) Act 1981*.

### U 3 Interpretation for Act

#### (1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

**agreement** means an industrial agreement under the *Workplace Relations Act 1996* (Cwlth).

**award** means an award or determination under the *Workplace Relations Act 1996* (Cwlth).

**award holiday** means a day that is, under an award or agreement, a holiday for persons employed in the building and construction industry.

**board** means the Construction Industry Long Service Leave Board established by section 4.

**building and construction industry** means—

- (a) in relation to industry in the ACT—the industry of carrying out the construction, reconstruction, renovation, alteration, demolition or maintenance of—
  - (i) buildings; and
  - (ii) fences; and
  - (iii) swimming pools; and



- (iv) roadworks, railways, airfields or other works for the carriage of persons, animals or vehicles; and
- (v) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or watercourse for the purpose of navigation; and
- (vi) works for the storage or supply of water or for the irrigation of land; and
- (vii) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises; and
- (viii) bridges, viaducts, aqueducts or tunnels; and
- (ix) pipelines; and
- (x) chimneystacks, cooling towers, drilling rigs, gas holders or silos; and
- (xi) structures, fixtures or works for use in any building or works referred to in subparagraphs (i) to (x); and
- (xii) navigational lights, beacons or markers; and
- (xiii) works for the drainage of land; and
- (xiv) works for the storage of liquids, other than water, or of gases; and
- (xv) works for the transmission of electric power; and
- (xvi) works for the transmission of wireless or telegraphic communications;

and includes the process of pile driving and the preparation of the site for any building or other works referred to in subparagraphs (i) to (xvi); and

- (b) in relation to industry carried out in a reciprocating State or Territory—the building and construction industry within the meaning of the corresponding law of that State or Territory.

***building and construction work*** means work performed in the ACT in the building and construction industry, being—

- (a) work in respect of which a rate of pay is fixed by a prescribed award; or
- (b) work performed under a contract of employment by a person—
  - (i) as a clerk of works or construction supervisor; or
  - (ii) acting as a foreman, forewoman, sub-foreman, sub-forewoman or leading hand in the supervision of work performed in the building and construction industry.

***chairperson*** means the chairperson of the board.

***contractor*** means a person, other than an employee or an apprentice, who performs work in the building and construction industry for fee or reward on his or her own account.

***corresponding law*** means a law of a State or another Territory specified in a notice under section 62.

***defined fraction*** means—

- (a) in relation to service that occurred before the commencement of the *Long Service Leave (Building and Construction Industry) (Amendment) Act (No 2) 1996*<sup>13/15</sup>; and
- (b) in relation to service that occurred on or after that commencement<sup>13/10</sup>.

***deputy registrar*** means the Deputy Long Service Leave Registrar under section 17A.

***determination*** includes a variation, suspension, interpretation or cancellation of a determination.

***employee*** means a person employed, other than by the Territory, the Commonwealth, the Australian National University or the University of Canberra, to perform building and construction work,

and includes a person who is remunerated at piecework rates and an apprentice.

***employees and contractors register*** means the Long Service Leave (Building and Construction Industry) Register of Employees and Contractors established under section 31.

***employer*** means a person (other than the Territory, the Commonwealth, the Australian National University or the University of Canberra) who employs any person to perform building and construction work.

***employers register*** means the Long Service Leave (Building and Construction Industry) Register of Employers established under section 26.

***Long Service Leave Act*** means the *Long Service Leave Act 1976*.

***member*** means a member of the board, and includes the chairperson.

***ordinary remuneration*** means—

- (a) in relation to an employee (other than a working director)—  
any amount paid or payable to the employee in respect of the performance by him or her of building and construction work, being an amount that is the sum of—
  - (i) the salary or wages paid or payable in respect of that work; and
  - (ii) any allowances paid or payable in respect of that work in relation to skill or qualifications; and

- (iii) any amounts paid or payable in respect of that work under a bonus or incentive scheme, being amounts that are usually paid to the employee with his or her salary or wages (not being an amount in respect of overtime or travelling costs or an additional payment in respect of recreation leave); and
- (b) in relation to a contractor or a working director means—
  - (i) the amount paid or payable to the contractor or working director in respect of the performance by him or her of building and construction work (other than any amount paid or payable to the contractor or working director for reimbursement of any costs incurred, or for any materials provided, by him or her in performing that work); or
  - (ii) the minimum salary or wages payable under an award in respect of the performance by a contractor or working director of that building and construction work;whichever is the greater.

***prescribed retiring age*** means—

- (a) in relation to a registered employee or a registered contractor who has been granted a service pension under the *Veterans' Entitlements Act 1986* (Cwlth), section 38—the age at which the employee or contractor first receives payment of the service pension; or
- (b) in any other case—the age of 65 years.

***reciprocal agreement or reciprocal arrangement*** means a reciprocal agreement or reciprocal arrangement made under section 64.

***reciprocal authority*** means the person or body (however described) appointed or established under the corresponding law of a reciprocating State or Territory to administer the scheme of long service benefits established by that law.

***reciprocating State or Territory*** means a State or another Territory with a Minister of State of which a reciprocal agreement or reciprocal arrangement has been made.

***recognised service*** means—

- (a) a period of service with which a registered employee or a registered contractor has been credited in the employees and contractors register; or
- (b) a period comprising—
  - (i) a period of service referred to in paragraph (a); and
  - (ii) a period of service with which the registered employee or registered contractor has been credited under the corresponding law of a reciprocating State or Territory.

***registered*** means registered under this Act.

***registered medical practitioner*** means a medical practitioner who is registered under the *Medical Practitioners Act 1930* or under the law of a State or another Territory that provides for the registration of medical practitioners.

***registrar*** means the Long Service Leave Registrar under section 17.

***salary or wages*** includes payments by way of commission, but does not include—

- (a) payments in respect of overtime; or
- (b) payments at penalty rates of pay; or
- (c) allowances which, under an award or agreement, are not to be taken into account in determining a rate of remuneration in respect of overtime.

***service*** means service in the building and construction industry.

***working day*** means a day other than a Saturday, a Sunday or a day that is a public holiday or an award holiday.

**working director** means the director of a company employed by it to perform building and construction work, the only other employees of the company (if any) being directors.

- (2) For this Act, work consisting of—
- (a) planning, sewing or laying floor coverings; and
  - (b) landscaping;
- shall be taken to be work performed in the building and construction industry.
- (3) For this Act, a person shall not be deemed to be not an employee by reason only of the fact that the person is remunerated wholly or partly by commission.
- (4) For subsection (1), definition of **building and construction**, the Building Industry Labourers (On-Site) A.C.T. Award 1986 shall, in respect of the period commencing on 14 April 1986 and ending immediately before the commencement of the *Long Service Leave (Building and Construction Industry) (Amendment) Act (No 3) 1988*, be deemed to have been a prescribed award.
- (5) For this Act, work performed by an employee or a registered contractor outside the ACT shall be deemed to be building and construction work if—
- (a) that work would, if it were performed in the ACT, be building and construction work; and
  - (b) the employer of that employee, or that contractor, pays to the board the prescribed amount under section 37 or 38, as the case may be, in relation to the ordinary remuneration paid or payable to the employee or contractor in respect of the performance by him or her of that work.

## **Part 2 Administration**

### **Division 2.1 The board**

#### **4 Establishment of board etc**

- (1) There is established a board by the name of the Construction Industry Long Service Leave Board.
- (2) The board—
  - (a) is a body corporate, with perpetual succession; and
  - (b) shall have a common seal; and
  - (c) is capable of acquiring, holding and disposing of real and personal property; and
  - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the board affixed to a document and shall presume that it was duly affixed.

#### **5 Independence of board**

The board shall not be, and shall not be regarded as, for any purpose, the servant or agent of the Territory.

#### **6 Functions of board**

The functions of the board are—

- (a) to administer the scheme of long service benefits established by this Act in respect of employees and contractors engaged in the building and construction industry; and
- (b) to make recommendations to the Minister as to any change that the board considers should be made to the rate of payments

made by employers and registered contractors under this Act;  
and

- (c) to make recommendations to the Minister as to the laws of a State or another Territory that the board considers suitable to be declared as corresponding laws under section 62; and
- (d) to make payments in accordance with this Act; and
- (e) to establish and maintain the employers register and the employees and contractors register in accordance with this Act.

## **7 Powers of board**

The board has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions under this Act and in particular, without limiting the generality of the foregoing—

- (a) to take any necessary action to recover moneys payable to the board and such debts as may be incurred against the board; and
- (b) to enter into agreements for the purpose of borrowing moneys in accordance with this Act; and
- (c) to incur any necessary legal and other costs in proceedings by or against the board; and
- (d) to refund any moneys that are refundable under this Act; and
- (e) to give effect to the terms of a reciprocal agreement or a reciprocal arrangement.

## **7A Delegation by board**

The board may, by writing under its common seal, delegate any of its powers to a public servant.

## **8 Constitution of board**

- (1) The board shall consist of—



- (a) the chairperson; and
  - (b) a member representing employer organisations; and
  - (c) a member representing employee organisations.
- (2) Each member of the board—
  - (a) shall be appointed by the Minister; and
  - (b) shall, subject to this Act, hold office for such period, not exceeding 5 years, as is specified in the instrument of his or her appointment; and
  - (c) shall be eligible for reappointment.
- (3) The performance of the functions or the exercise of the powers of the board is not affected by reason only of there being a vacancy or vacancies in the membership of the board.

## **9 Acting members of board**

- (1) The Minister may appoint a person to act as a member—
  - (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a member is absent from duty or from the ACT or is, for any other reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) The Minister may at any time terminate the appointment of a person appointed to act in accordance with subsection (1).
- (3) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his or her appointment had not arisen, that there is a defect or irregularity in or in connection with his or

her appointment, that the appointment had ceased to have effect or that the occasion for him or her to act had not arisen or had ceased.

## **10 Resignation**

- (1) A member of the board may resign his or her office by writing signed by him or her and delivered to the Minister.
- (2) Where a member of the board resigns his or her office, his or her resignation shall take effect on the day on which the instrument of resignation is delivered to the Minister in accordance with subsection (1) or on such later date as is specified in the instrument.

## **11 Termination of appointment**

- (1) The Minister may terminate the appointment of a member of the board by reason of misbehaviour or physical or mental incapacity.
- (2) If a member of the board—
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) is convicted in Australia of an offence punishable by imprisonment for 1 year or longer; or
  - (c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the board;

the Minister shall terminate the appointment of the member.

## **13 Meetings**

- (1) The chairperson shall convene such meetings of the board as the chairperson considers necessary for the performance of its functions.
- (2) At a meeting of the board, 2 members constitute a quorum.

- (3) The chairperson shall preside at all meetings of the board at which he or she is present.
- (4) If the chairperson is not present at a meeting of the board, the members present shall choose 1 of the 2 to preside at that meeting.
- (5) Questions arising at a meeting of the board shall be determined by a majority of the votes of the members present and voting.
- (6) The person presiding at a meeting of the board has a deliberative vote and, subject to subsection (7), has, in the event of an equality of votes, a casting vote.
- (7) If only 2 members are present at a meeting of the board and they differ on a question arising at the meeting, that question shall be deferred until the next meeting at which more than 2 members are present.

#### **14 Disclosure of interest**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the board.

Maximum penalty: 20 penalty units.

- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the board and the member shall not, unless the Minister or the board otherwise determines—
  - (a) be present during any deliberation of the board with respect to that matter; or
  - (b) take part in any decision of the board with respect to that matter.
- (3) For the purpose of the making of a determination by the board under subsection (2) in relation to a member who has made a disclosure

under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the board for the purpose of making the determination; or
  - (b) take part in the making by the board of the determination.
- (4) Where a member fails, without reasonable excuse, to comply with the requirements of this section, the Minister shall terminate the appointment of the member.

**15 Minister may require information**

The board shall furnish to the Minister such information relating to the exercise of its powers and the performance of its functions under this Act as the Minister requires.

**16 Protection of members**

An action or proceeding, civil or criminal, does not lie against a member of the board for or in respect of any act or thing done in good faith by the member in his or her capacity as a member.

**Division 2.2 The registrar and inspectors**

**17 Registrar**

- (1) There shall be a Long Service Leave Registrar.
- (2) The registrar shall perform such functions as are required by this Act, or as the board directs.
- (3) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the registrar.

- (4) The registrar shall be the public servant for the time being performing the duties of the public service office referred to in subsection (3).

**17A Deputy registrar**

- (1) There shall be a Deputy Long Service Leave Registrar.
- (2) The deputy registrar may perform any function of the registrar, subject to any direction of the registrar.
- (3) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the deputy registrar.
- (4) The deputy registrar shall be the public servant for the time being performing the duties of the public service office referred to in subsection (3).

**18 Inspectors**

- (1) The registrar may appoint such inspectors as he or she considers necessary for this Act.
- (2) The registrar shall not appoint a person who is not a public servant as an inspector.
- (3) A person appointed under this section shall, subject to this Act, perform such duties for this Act as the registrar directs.
- (4) The Minister shall cause to be issued to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

**18A Return of identity cards**

A person appointed to be an inspector shall not, on ceasing to be an inspector, fail or refuse without reasonable excuse to return the identity card issued to him or her under section 18 (4).

Maximum penalty: 1 penalty unit.

**19 Powers of inspector**

- (1) An inspector may, at any reasonable hour of the day, enter the premises of an employer, or of a person who he or she has reasonable grounds for believing to be an employer, and—
  - (a) inspect any records, books or documents; and
  - (b) require any person at the premises to give the inspector—
    - (i) any information within the person's knowledge relating to the rights and duties under this Act of an employer or of any person employed by the employer; and
    - (ii) any records, books or documents, or copies of any records, books or documents, being records, books or documents that are in the person's possession or to which the person has access.
- (2) An inspector who enters on premises under subsection (1) is not authorised to remain on the premises, and a person is not required to comply with a requirement made by an inspector under subsection (1) (b), if, on request by the occupier, or the person in charge, of the premises, the inspector does not produce his or her identity card issued under section 18 (4).
- (3) An inspector may, by notice in writing served on an employer, require the employer to produce to the board, within 14 days after the day on which the notice was served—
  - (a) any information referred to in subsection (1) (b) (i); and

- (b) any records, books, documents or copies referred to in subsection (1) (b) (ii);

being information, records, books, documents or copies specified in the notice.

- (4) Service of a notice on an employer may be effected—
  - (a) if the employer is a body corporate—by leaving it at the employer's registered office; or
  - (b) if the employer is a natural person—
    - (i) by delivering it to the employer personally; or
    - (ii) by leaving it at the last known place of residence or business of the employer with a person who is, or is reasonably believed to be, both over the age of 16 years and residing or employed at that place.
- (5) A person who fails to comply with a requirement made of the person by an inspector under this section commits an offence.

Maximum penalty: 50 penalty units.

- (6) In this section:

*records, books or documents* means records, books or documents that are required by this Act to be kept by an employer.

## **Division 2.3                      Finances**

### **20                      Moneys of board**

The moneys of the board shall consist of—

- (a) moneys received by the board under sections 37 and 38; and
- (b) income derived from the investment of moneys of the board; and
- (c) moneys borrowed by the board; and

- (d) moneys paid to the board under a reciprocal agreement or reciprocal arrangement; and
- (e) any other moneys paid to the board in accordance with this Act.

## **21 Application of moneys**

The moneys of the board shall be applied only—

- (a) in payment or discharge of the costs, expenses or other obligations of the board under this Act; and
- (b) in payment of remuneration and allowances payable to any person appointed or employed under this Act.

## **22 Borrowing by board**

- (1) The board may from time to time borrow moneys in such amounts, and on such terms and conditions, as the Minister approves.
- (2) The board may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.
- (3) The board shall not borrow otherwise than in accordance with this section.

## **23 Contracts**

- (1) The board shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the board of an amount exceeding \$250 000.
- (2) Subsection (1) does not apply in relation to a contract for the investment of money entered into in accordance with the *Financial Management Act 1996*, section 56.



**24        Triennial investigation by actuary**

- (1) An investigation as to the state and sufficiency of the moneys of the board shall be made by the actuary at such times as the board requests but in any event not later than the expiration of a period of 3 years after the commencement of this Act and at the expiration of each succeeding period of 3 years.
- (2) The actuary shall report to the board the result of the investigation, and shall state whether, in the actuary's opinion, any reduction or increase is necessary in the rates of periodic payments payable to the board by employers and registered contractors under this Act.
- (3) The actuary shall forward to the Minister a copy of each report made under this section.
- (4) The Treasurer shall, in writing, appoint an actuary for the purposes of this section.
- (5) In this section:

*the actuary* means the actuary appointed under subsection (4).

**Division 2.4        Staff**

**25C        Staff**

- (1) The board may make arrangements with the chief executive for the use of the services of public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies in relation to the management by the board of public servants who are the subject of an arrangement under subsection (1).

## Part 3                      Registration of employers

### 26                      Employers register

The board shall establish and maintain a register called the Long Service Leave (Building and Construction Industry) Register of Employers.

### 27                      Application for registration

- (1) An employer shall apply to the registrar in accordance with this section for registration under this Act.

Maximum penalty: 50 penalty units.

- (2) An application under subsection (1) shall—

(a) be in writing signed by the applicant; and

(b) contain particulars of—

(i) the name of the applicant, the address of the principal place of business of the applicant and, if the applicant is a body corporate, the address of its registered office; and

(ii) the nature of the work in which the applicant is engaged as an employer; and

(iii) the names of all persons who are employees of the applicant; and

(iv) the award under which each of the persons referred to in subparagraph (iii) is employed; and

(v) such other matters (if any) as are prescribed; and

- (c) be lodged with the registrar within 3 months after the date of commencement of this part or within 1 month after the

applicant becomes an employer, whichever is the later, or within such further time as the registrar allows.

## **28 Registration of employer**

- (1) Where the registrar is satisfied that a person who has applied for registration under section 27 is an employer, the registrar shall cause the person to be registered.
- (2) The registration of a person under subsection (1) shall be effected by entering in the employers register—
  - (a) the name and address of the person; and
  - (b) the date on which the registration takes effect; and
  - (c) such other particulars as the board thinks fit.
- (3) The registration of a person under this section shall take effect as from the date on which the application for registration was lodged with the registrar under section 27 (2).

## **29 Certificate of registration**

- (1) Where a person is registered under this part the registrar shall cause to be issued to him or her a certificate of registration under the hand of the registrar.
- (2) A certificate of registration issued under subsection (1) is evidence that the person specified in the certificate was registered on the date specified in the certificate.

## **30 Change of address to be notified**

Where a change occurs in the address of a registered employer entered in the employers register under section 28 (2), the registered employer shall, within 1 month of the change, notify the registrar in writing accordingly.

Maximum penalty: 5 penalty units.

## **Part 4 Registration of employees and contractors**

### **31 Employees and contractors register**

The board shall establish and maintain a register called the Long Service Leave (Building and Construction Industry) Register of Employees and Contractors.

### **32 Application for registration by employee or contractor**

- (1) A person who—
  - (a) is an employee; or
  - (b) is a contractor;may apply to the registrar for registration under this Act.
- (2) An application under subsection (1) shall—
  - (a) be in writing signed by the applicant; and
  - (b) contain particulars of—
    - (i) the name and residential address of the applicant and his or her date of birth; and
    - (ii) where the applicant is a person referred to in subsection (1) (a)—the nature of the building and construction work performed by the applicant, the date on which he or she commenced his or her current employment in that work, and the award under which he or she is employed; and
    - (iii) where the applicant is a contractor—the nature of the work in the building and construction industry performed

by the applicant and the date on which he or she commenced his or her current work in that industry; and

- (iv) the name and address of the principal place of business of the employer or, if the employer is a body corporate, the address of its registered office; and
- (v) where the applicant is credited under a corresponding law with a period of service in the building and construction industry—any State or other Territory under a corresponding law of which a period of service has been credited; and
- (vi) if the applicant is serving a period of apprenticeship—the date on which the applicant commenced that period of apprenticeship; and
- (vii) such other matters (if any) as are prescribed.

- (3) In subsection (1) (a):

*employee* includes a person who was an employee at any time during the period of 12 months before the date of the application.

### **34 Application by employer for registration of employee**

- (1) Where an employer employs an employee who—
- (a) is not registered under this Act; and
  - (b) has not applied for registration under section 32 within 3 months after the employee began building and construction work;

the employer may at any time after the expiration of that period apply to the registrar for the registration of that employee under this Act.

- (2) An application under subsection (1) shall be in writing signed by the applicant and shall contain particulars of—

- (a) the name of the applicant; and
- (b) the address of the principal place of business of the applicant or, if the applicant is a body corporate, the address of its registered office; and
- (c) the name and address of the employee and his or her date of birth; and
- (d) the nature of the work performed by the employee and the date on which he or she commenced his or her employment with the applicant; and
- (e) such other matters (if any) as are prescribed.

### **36 Registration of employee or contractor**

- (1) Where the registrar is satisfied—
  - (a) in relation to a person who applies for registration under section 32—that the person is an employee or contractor; or
  - (b) in relation to a person in respect of whom an application is made by an employer under section 34—that the person in respect of whom the application is made is an employee;the registrar shall cause the person to be registered.
- (2) The registration of a person under subsection (1) shall be effected by entering in the employees and contractors register—
  - (a) the name and address of the person and his or her date of birth; and
  - (b) the name of the employer (if any) of the person; and
  - (c) the address of the principal place of business of the employer (if any) of the person and, if the employer is a body corporate, the address of its registered office; and
  - (d) the date on which the registration takes effect; and

- (e) such other particulars as the board thinks fit.
- (3) Where the registrar makes a decision refusing an application for registration under this part, he or she shall, within 7 days of making that decision, cause to be given to the applicant a notice in writing setting out the terms of the decision.
- (4) Where the registrar refuses an application for registration under this part, the applicant may appeal to the board against the decision and, on an appeal under this section, the board may—
  - (a) confirm the decision of the registrar; or
  - (b) order that the applicant, or the person in respect of whom the application for registration is made, as the case requires, be registered.
- (5) Where the board makes a decision under subsection (4), the board shall, within 7 days of making that decision, prepare and furnish to the applicant a statement in writing setting out the terms of the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.
- (6) A notice under subsection (3) may be given, and a statement under subsection (5) may be furnished, to an applicant by post addressed to the applicant at his or her address set out in the application.
- (7) The registration of a person under subsection (1), or under an order of the board under subsection (4), takes effect—
  - (a) if the applicant for registration was an employee on the prescribed day—
    - (i) on the day on which he or she commenced building and construction work with the employer with whom he or she was employed on the prescribed day; or
    - (ii) on 1 October 1981;
  - whichever is the later; or

- (b) if the applicant for registration was not an employee on the prescribed day—on the day on which the applicant commenced building and construction work after the prescribed day.
- (8) In subsection (7):
- prescribed day* means the day that was 12 months before the date on which an applicant for registration lodged his or her application.



## Part 5 Periodic notices and payments

### 37 Periodic notices and payments by employers

- (1) Subject to this section, an employer shall, within 15 days after the expiration of the period of 2 months from the commencement of this part or the date on which he or she first becomes an employer, whichever is the later, and within 15 days after the expiration of each succeeding period of 2 months, or such further period as the registrar, on application by the employer, allows—

(a) lodge with the board a notice in accordance with subsection (2); and

(b) pay to the board the prescribed amount;  
in relation to that period.

Maximum penalty: 20 penalty units.

- (2) A notice lodged with the board under subsection (1) shall be in writing signed by the employer and shall contain a statement certifying that each of the employees specified in the notice performed building and construction work during the period to which the notice relates, together with particulars of—

(a) the name and address of the employer; and

(b) subject to subsection (12), the name of each employee who performed building and construction work or who was absent on paid leave during the period to which the notice relates; and

(c) the days, or parts of days, on which each of those employees performed that work or was absent on paid leave; and

(d) the amount of ordinary remuneration paid or payable by the employer to each of those employees during that period; and

(e) such other matters (if any) as are prescribed.

- (3) For subsection (1) (b), the *prescribed amount* for a 2-month period is—

- (a) 1.5% of the total of the amounts of ordinary remuneration paid or payable by the employer to his or her employees (other than apprentices) during that period; or
- (b) if the Minister determines another percentage of that total—the other percentage.

*Note* A determination under par (b) must be made on the advice of the board and is a notifiable instrument (see s (10) and s (11)).

- (4) Where—

- (a) an employee performs, within a period of not more than 12 months, building and construction work in the ACT; and
- (b) the employer of that employee makes payments in respect of the performance of that work to a reciprocal authority with which that employee is registered;

the board may, on application by the employer, grant to the employer an exemption from payment of an amount under subsection (1) (b) in relation to the ordinary remuneration paid or payable to the employee in respect of the performance of that work.

- (5) Where an exemption is granted by the board to an employer under subsection (4) in respect of any work, that work shall be deemed not to be building and construction work for this Act.
- (6) If an employer fails to pay the prescribed amount in relation to a period—
- (a) within the period specified in subsection (1); or
  - (b) within any further period allowed by the registrar;

there is payable to the board by the employer, in addition to the prescribed amount—

- (c) interest on the unpaid amount at the rate of 2.5% of that amount; or
  - (d) \$50;
- for each month or part of a month during which the amount remains unpaid, whichever is the greater.
- (7) The registrar may, on the application of an employer who has contravened subsection (1), or of the registrar's own motion, remit part or all of an amount payable by the employer under subsection (6) if the registrar is satisfied—
    - (a) that the circumstances that gave rise to the contravention were not caused directly or indirectly by the employer; or
    - (b) that, because of special circumstances, it would be fair and reasonable to remit part or all of that amount.
  - (8) Where a person is convicted of an offence against subsection (1) the court may, in addition to imposing a penalty under that subsection, order the person to pay the board the prescribed amount in relation to the period in respect of which the offence was committed.
  - (9) Where a court has made an order under subsection (8), a certificate signed by the appropriate officer of the court specifying the amount to be paid and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of the amount, and the certificate is then enforceable in all respects as a final judgment of the court in which it is filed.
  - (10) The Minister may, on the advice of the board, determine, in writing, a percentage for subsection (3) (b).
  - (11) A determination under subsection (3) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (12) In subsection (2) (b):

*employee* does not include a person who, during the period to which the notice relates—

- (a) was not a registered employee; and
- (b) performed building and construction work for less than 5 consecutive days.

### **37A Exemption from payments for working directors**

- (1) The board shall—

- (a) on receipt of a written notice from a person; and
- (b) if satisfied that the person to whom the notice relates is a working director;

grant to the employer of the working director an exemption from payment of an amount under section 37 (1) (b) in relation to the performance of building and construction work by that working director.

*Note* If a form is approved under s 65 (Approved forms) for a notice, the form must be used.

- (2) An exemption under subsection (1) remains in force until the person to whom the exemption relates—
- (a) ceases to be a working director, otherwise than by reason of his or her ceasing to perform work in the building and construction industry; or
  - (b) notifies the board in writing that he or she no longer wishes the exemption to apply in respect of him or her;

whichever first occurs.

- (3) A working director to whom an exemption relates is to be taken not to be an employee for this Act for the period for which the exemption remains in force.

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**38 Periodic notices and payments by registered contractors**

- (1) A registered contractor shall, within 15 days after the expiration of the period of 2 months from the date on which the registered contractor lodges his or her application for registration, and within 15 days after the expiration of each succeeding period of 2 months, or such further period as the registrar, on application by the registered contractor, allows—
- (a) lodge with the board a notice in accordance with subsection (2); and
  - (b) pay to the board the defined amount;
- in relation to that period.
- Maximum penalty: 20 penalty units.
- (2) A notice lodged with the board under subsection (1) shall be in writing signed by the registered contractor and shall contain particulars of—
- (a) the name and address of the contractor; and
  - (b) the nature of the work performed by him or her during the period to which the notice relates; and
  - (c) the days, or parts of days, on which he or she performed that work; and
  - (d) the ordinary remuneration paid or payable to him or her during that period in respect of the performance of that work; and
  - (e) such other matters (if any) as are prescribed.
- (3) For subsection (1) (b), the ***defined amount*** for a 2-month period is—
- (a) 2.5% of the total of the amounts of ordinary remuneration paid or payable to the registered contractor during that period for the performance by the contractor of building and construction work; or

- (b) if the Minister determines another percentage of that total—the other percentage.
- (4) The Minister may, on the advice of the board, determine, in writing, a percentage for subsection (3) (b).
- (5) A determination under subsection (3) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### **39 Employers to keep records**

- (1) An employer shall, in respect of each employee employed by him or her, keep a record showing particulars of—
  - (a) the name of the employee and his or her date of birth; and
  - (b) the nature of the building and construction work performed by the employee; and
  - (c) the ordinary remuneration of the employee; and
  - (d) the number of days worked in each period of 2 months by the employee; and
  - (e) the date on which the employee commenced service with the employer; and
  - (f) long service leave granted, or payment in lieu of leave made, to the employee; and
  - (g) where the person ceases to be employed by the employer—the date on which he or she so ceased to be employed.

Maximum penalty: 20 penalty units.

- (2) An employer shall retain a record referred to in subsection (1) for a period of 6 years after the date on which the service of the person to whom the record relates is terminated.

Maximum penalty: 20 penalty units.

## Part 6

# Entries in employees and contractors register

### 40 Particulars in employees and contractors register

The board shall cause to be entered and maintained in the employees and contractors register in relation to each registered employee and registered contractor particulars of—

- (a) if the employee or contractor is serving a period of apprenticeship in the building and construction industry—the date on which the applicant commenced that period of apprenticeship; and
- (b) the number of days service with which the employee or contractor is credited in accordance with this Act; and
- (c) the ordinary remuneration of the employee or contractor in respect of the building and construction work, or the work in the ACT in the building and construction industry, respectively performed by the employee or by the contractor; and
- (d) the entitlement of the employee or contractor to long service leave; and
- (e) long service leave granted to or taken by, or payment in lieu of long service leave made to, or in respect of, the employee or contractor, whether under this Act or the Long Service Leave Act; and
- (f) where a former employee or contractor has ceased to be employed or has ceased work in the building and construction industry—the date on which he or she so ceased; and
- (g) such other matters (if any) as the board thinks fit.

**41 Determination and entry of ordinary remuneration by board**

- (1) Where, in relation to a notice lodged with the board by an employer under section 37, or by a registered contractor under section 38, the board is of the opinion that the amount of ordinary remuneration specified in the notice as paid or payable to an employee or the registered contractor is insufficient or excessive by reason of the nature of the work performed by that employee or contractor, the board may, subject to this section, determine an amount as the ordinary remuneration of that employee or contractor in lieu of the amount so specified in the notice and shall enter that amount in the employees and contractors register in relation to the employee or contractor accordingly.
- (2) Where the board makes a determination under subsection (1), the amount determined by the board shall be treated for this Act as the ordinary remuneration of the employee or contractor to whom the determination relates.
- (3) Before making a determination under subsection (1), the board shall cause a notice in writing to be sent to the employer and the employee, or to the registered contractor, as the case requires, and the employer, employee or contractor, may—
  - (a) within 1 month of the date of the notice, lodge a written statement with the board relating to any matters that he or she wishes the board to take into consideration in making the determination; and
  - (b) appear before the board, either in person or by a person acting on his or her behalf, for the purpose of making representations to the board in relation to the making of the determination.
- (4) A notice sent to a person under subsection (2) shall be posted to the person at his or her address as last recorded in the employers register or the employees and contractors register, as the case requires.



- (5) Where the board enters in the employees and contractors register under subsection (1) an amount that is greater than the amount specified in a notice lodged with the board under section 37 or 38, the employer or registered contractor who lodged the notice shall pay to the board an amount equal to the difference between the amount paid by him or her in accordance with section 37 or 38, as the case may be, and the amount that would have been payable under this Act had the ordinary remuneration of the person been the amount so entered in that register.
- (6) Where the board enters in the employees and contractors register under subsection (1) an amount that is less than the amount specified in a notice lodged with the board under section 37 or 38, the board shall pay to the employer or registered contractor who lodged the notice an amount equal to the difference between the amount paid by him or her in accordance with section 37 or 38, as the case may be, and the amount that would have been payable under this Act had the ordinary remuneration of the person been the amount so entered in that register.

## **U 42 Service credits**

- (1) A registered employee or registered contractor shall be credited in the employees and contractors register with 1 day's service for each working day, or part of a working day, on which the employee or contractor—
- (a) performs work, being—
- (i) in the case of a registered employee—building and construction work; or
- (ii) in the case of a registered contractor—work in the ACT in the building and construction industry; or
- (b) is absent from the work referred to in paragraph (a) (i) or (ii) respectively—

- (i) on annual leave during any period exceeding 4 weeks in any year, being, in the case of an employee, a period in respect of which the employee is, or is entitled to be, paid ordinary remuneration by his or her employer; or
  - (ii) on long service leave; or
  - (iii) attending on a court in accordance with a summons to serve as a juror in proceedings before the court; or
  - (iv) attending on a court in accordance with a subpoena to give evidence in proceedings before the court.
- (2) A registered employee shall be credited in the employees and contractors register with 1 day's service—
  - (a) for each working day on which the employee is absent from employment in building and construction work on any paid leave granted by his or her employer, other than annual leave or an absence during a period referred to in paragraph (c); and
  - (b) where the employee is absent from employment in building and construction work on account of incapacity arising out of an injury in respect of which the employee is entitled to compensation under the *Workers Compensation Act 1951*—for each working day during the period, being a period of not more than 110 days in any 1 year, in which the employee is absent; and
  - (c) where the employee is absent from employment in building and construction work and a registered medical practitioner certifies that in his or her opinion the employee is unable to work on account of an illness or injury—for each working day during the period, being a period of not less than 10 days and not more than 110 days in any 1 year, in which the employee is absent and in respect of which the employee is, or is entitled to be, paid ordinary remuneration by his or her employer; and

- (d) for each working day during a period in which the employment of the employee in building and construction work has been interrupted or terminated by his or her employer with the intention to avoid granting long service leave to the employee.
- (3) A registered employee or registered contractor shall not be credited—
  - (a) in respect of the period commencing on the date fixed by the Minister under section 2 (2) and ending on 30 June next following—with more days service than equals the number that bears to 220 the same proportion as the number of months in that period bears to 12; and
  - (b) in respect of any year ending on any subsequent 30 June—with more than 220 days service in addition to any days with which the registered employee or registered contractor is credited under subsection (1) (b) (i) during that year.
- (4) A registered employee shall not be credited under subsection (2) (d) with more than 4 years service in respect of any 1 period referred to in that paragraph.
- (5) A registered contractor shall not be credited in respect of any 2 or more parts of the same working day with more than 1 day's service.
- (6) Where—
  - (a) a registered employee or registered contractor is credited with less than 10 years of recognised service; and
  - (b) in the case of an employee—he or she has ceased work in the building and construction industry, for a reason other than total incapacity, with the intention of leaving the industry permanently; and
  - (c) in the case of a contractor—he or she has requested the board in writing to remove his or her name from the employees and contractors register; and

- (d) payment in respect of the period of recognised service has been made to the employee or the contractor under this Act or a corresponding law;

the employee or contractor shall not be credited in the employees and contractors register with any period of service during the period of 12 months beginning on the date on which the application for that payment was made.

- (7) An employee shall not be credited with a period of service unless his or her employer has made payment to the board in accordance with section 37 in respect of the period of service.

- (8) Where—

- (a) a registered employer has ceased to employ any person to perform building and construction work; and
- (b) the employer has not made payment to the board in accordance with section 37 in respect of a period of service by a registered employee who was employed by the employer during the period of service; and
- (c) the registrar is satisfied that the employee would, but for the employer's failure to make the payment, be entitled to be credited in the employees and contractors register with the period of service;

the registrar may credit the employee in that register with that period of service.

#### **43 Bonus credits for employees and contractors**

- (1) Where a person, other than an employee who is an apprentice, applies for registration under section 32 within 3 months after the date of commencement of part 4, the person shall, on registration, be credited in the employees and contractors register with 440 days service in the ACT.

- (2) Where a person referred to in subsection (1) is credited in the employees and contractors register with a period of service in the ACT that, when added to the period of 440 days referred to in that subsection, amounts to not less than 10 years, the person shall be credited in that register with a further period of 440 days.
- (3) Where a person referred to in subsection (1)—
  - (a) is credited in the employees and contractors register with a period of service in the ACT that, when added to the period of 440 days referred to in that subsection, amounts to not less than 495 days but less than 10 years; and
  - (b) ceases to work in the building and construction industry by reason of total incapacity or death, or by reason of having reached the prescribed retiring age;the person shall be credited in that register with a further period, being a period that bears the same proportion to 440 days as the firstmentioned period referred to in paragraph (a) bears to 10 years.
- (4) Where a person referred to in subsection (1)—
  - (a) is credited in the employees and contractors register with a period of service in the ACT that, when added to the period of 440 days referred to in that subsection, amounts to not less than 5 years but less than 10 years; and
  - (b) ceases to work in the building and construction industry, other than by reason of total incapacity or death or by reason of having reached the prescribed retiring age, with the intention of leaving that industry permanently;the person shall be credited in that register with a further period, being a period that bears the same proportion to 440 days as the firstmentioned period referred to in paragraph (a) bears to 10 years.

**44 Bonus credits for apprentices**

- (1) Where a person who is an apprentice serving his or her period of apprenticeship in the ACT—
- (a) applied for registration within 3 months after 1 October 1981; and
  - (b) having been registered, completes the period of apprenticeship, or ceases to work in the building and construction industry because of total incapacity or death;

the person shall, on completing that period or ceasing to work, as the case may be, be credited in the employees and contractors register with 440 days service.

- (2) Where a person referred to in subsection (1) is credited in the employees and contractors register with a period of service in the ACT that, when added to the period of 440 days referred to in that subsection, amounts to not less than 10 years, the person shall be credited in that register with a further period of 440 days.
- (3) Where a person referred to in subsection (1)—
- (a) is credited in the employees and contractors register with a period of service in the ACT that, when added to the period of 440 days referred to in that subsection, amounts to not less than 495 days but less than 10 years; and
  - (b) ceases to work in the building and construction industry by reason of total incapacity or death;
- the person shall be credited in that register with a further period, being a period that bears the same proportion to 440 days as the firstmentioned period referred to in paragraph (a) bears to 10 years.
- (4) Where a person referred to in subsection (1)—
- (a) is credited in the employees and contractors register with a period of service in the ACT that, when added to the period of

440 days referred to in that subsection, amounts to not less than 7 years but less than 10 years; and

- (b) ceases to work in the building and construction industry, other than by reason of total incapacity or death, with the intention of leaving that industry permanently;

the person shall be credited in that register with a further period, being a period that bears the same proportion to 440 days as the firstmentioned period referred to in paragraph (a) bears to 10 years.

#### **45 Removing names from employees and contractors register**

- (1) Where a registered employee or a registered contractor has not been credited with any period of service in the employees and contractors register, or in a register (however described) kept under a corresponding law, for a period of not less than 4 years, the board shall remove the name of that employee or contractor from that register.
- (2) Where the name of a registered employee or a registered contractor is removed from the employees and contractors register under subsection (1)—
  - (a) the employee or contractor ceases to be registered on the date on which his or her name is so removed; and
  - (b) subject to subsection (4), the employee or contractor is not entitled to apply for or be paid any amount for, or in lieu of, long service leave in respect of any period of service entered in the register before the date on which the registration ceased.
- (3) The board shall not remove the name of a registered employee or registered contractor from the employees and contractors register if the employee or contractor ceases to perform building and construction work and has notified the board that he or she is otherwise employed or engaged in work in the building and construction industry, until—

- (a) either—
  - (i) the employee or contractor applies to the board for payment of the total amount for or in lieu of long service leave; or
  - (ii) his or her employer makes an application under section 63 (4) for payment of the total amount to which the employer is entitled under section 63 (5);
- (b) in the case of a working director or contractor—the working director or contractor requests the board to remove his or her name from the register; or
- (c) the period of 10 years commencing on the date on which the employee or contractor ceased to perform building and construction work expires;

whichever first occurs.

- (4) A notification under subsection (3) (b) shall specify—
  - (a) the date on which the registered employee or registered contractor became otherwise employed or engaged in work in the building and construction industry; and
  - (b) the name and address of the principal place of business of his or her employer (if any), or if the employer is a body corporate, the address of its registered office.
- (5) An employee or contractor is entitled to apply for and be paid an amount in lieu of long service leave in respect of any period of service entered in the register before the date on which his or her registration ceased if the employee or contractor would, but for his or her ceasing to be registered, have been entitled to payment in respect of that period under section 53.
- (6) If—



- (a) the name of a registered employee or registered contractor has been removed from the employees and contractors register; and
- (b) the board is satisfied that the employee or contractor has been credited with a period of service under a corresponding law within the period of 4 years ending on the day on which his or her name was removed from the register;

the board shall re-register the name of the employee or contractor in the employees and contractors register.

- (7) Where the name of an employee or contractor has been re-registered under subsection (6), this Act applies in relation to the employee or contractor as if his or her name had not been removed from the employees and contractors register.
- (8) Nothing in the section prevents a person whose name has been removed from the register from applying to the board for registration under this Act.

## Part 7 Annual certificates

### 46 Annual certificates for employees and contractors

- (1) The registrar shall, as soon as practicable after 31 July, but not later than 1 November, in each year, send by post to each registered employee or registered contractor at his or her address as last recorded in the employees and contractors register, a certificate specifying—
  - (a) the total number of days service with which that employee or contractor has been credited in that register in respect of the period commencing on the date of registration of the employee or contractor and ending on 30 June immediately before the date of the certificate; and
  - (b) the number of days service with which that employee or contractor has been so credited in respect of the year ending on 30 June immediately before the date of the certificate; and
  - (c) in the case of a registered contractor—the total of the amounts paid by that contractor to the board under section 38 during the year ending on 30 June immediately before the date of the certificate.
- (2) Subsection (1) does not apply if the registrar believes on reasonable grounds that the address of a registered employee or registered contractor, as last recorded in the employees and contractors register, is not the present address of the employee or contractor.

### 47 Annual certificates for employers

The registrar shall, as soon as practicable after 31 July, but not later than 1 November, in each year, send by post to each employer at his or her address, as last recorded in the employers register, a certificate specifying—

- (a) the name, as recorded in the employees and contractors register, of each of the employees employed by the employer during the year ending on 30 June immediately before the date of the certificate; and
- (b) the total number of days service with which each employee of that employer has been credited in the employees and contractors register in respect of the period commencing on the date of registration of the employee and ending on 30 June immediately before the date of the certificate; and
- (c) the number of days service with which each employee of that employer has been so credited in respect of the year ending on 30 June immediately before the date of the certificate; and
- (d) the total of the amounts paid by that employer to the board under section 37 during the year ending on 30 June immediately before the date of the certificate.

#### **48      Objection to matter specified in annual certificate**

- (1) A person to whom a certificate is sent under section 46 or 47 may, within 6 months after the date of the certificate, lodge with the board an objection in writing against the accuracy of any matter specified in the certificate.
- (2) Where an objection is lodged with the board under subsection (1), the board shall determine the objection and, where the board allows the objection, shall make any necessary correction in the register and issue an amended certificate to the person who lodged the objection.

## **Part 8 Long service leave and payments**

### **49 Long service leave**

A registered employee or a registered contractor is entitled to long service leave in accordance with the provisions of this Act.

### **50 Year of service**

For this Act, a registered employee or a registered contractor shall be taken—

- (a) to have completed a year of service for each 220 days service credited to the employee or contractor in the employees and contractors register; and
- (b) to have completed a year of recognised service for each 220 days recognised service credited to the employee or contractor.

### **51 Amount of leave**

- (1) A registered employee or registered contractor who is credited with a period of recognised service of not less than 10 years is entitled to—
  - (a) an amount of long service leave calculated at the rate of the defined fraction of a week's leave for each completed year of service credited to the employee or contractor in the employees and contractors register; and
  - (b) for any remainder of the period of service credited to the employee or contractor in the employees and contractors register—an amount of long service leave equal to the period that bears the same proportion to the defined fraction of a week as the remainder bears to 1 completed year of service.

- (2) A registered employee or a registered contractor who—
- (a) becomes entitled to long service leave under this Act; and
  - (b) is credited in the employees and contractors register with a further period of service commencing on the date on which he or she so became entitled to long service leave;
- is, entitled to long service leave in respect of that further period calculated in accordance with subsection (1) (a) and (b).

## **52 Grant of leave**

- (1) Long service leave to which a registered employee is entitled under this Act shall be granted by the employer—
- (a) within 6 months after the leave has accrued, or within such further period as the board, on application made by the employer or the employee, determines; or
  - (b) at such other time or times as are agreed by the employer and the employee.

Maximum penalty: 50 penalty units.

- (2) Long service leave shall not be granted in a period of less than 2 weeks.
- (3) Where long service leave is granted under this section, the employer shall give the registered employee a notice in writing specifying the date from which the long service leave is to be taken and the date on which the leave ends.
- (4) Unless the registered employee otherwise agrees, a notice under subsection (3) shall be given to the employee at least 2 months before the date specified in the notice as the date from which the long service leave is to be taken.

Maximum penalty: 50 penalty units.

**53 Entitlement to payment in lieu of leave**

- (1) Where—
- (a) a registered employee or registered contractor is credited with a period of recognised service, being a period—
    - (i) in the case of an employee—of not less than 5 years but less than 10 years; or
    - (ii) in the case of a person who has performed building and construction work as an employee and as a contractor—
      - (A) if the period of work as a contractor is not less than 1 year but his or her period of work as an employee and a contractor is less than 5 years—the period of service as a contractor; or
      - (B) if the total period of work as an employee and a contractor is equal to or exceeds 5 years—the period of service as an employee and a contractor; and
  - (b) in the case of an employee (other than a working director)—
    - (i) he or she ceased work in the building and construction industry (for a reason other than total incapacity, death or having reached the prescribed retiring age), with the intention of leaving the industry permanently; and
    - (ii) a period of not less than 20 weeks has expired commencing on the day after the day on which the employee ceased work and in respect of which period the employee has not been credited with any service; and
  - (c) in the case of a contractor or working director—he or she has requested the board in writing to remove his or her name from the employees and contractors register;

the employee or contractor is entitled to payment in lieu of long service leave in respect of—

- (d) an amount of long service leave calculated at the rate of the defined fraction of a week's leave for each completed year of service credited to the employee or contractor in the employees and contractors register; and
  - (e) for any remaining period of service credited to the employee or contractor in the employees and contractors register—an amount of long service leave equal to the period that bears the same proportion to the defined fraction of a week as that remaining period bears to 1 completed year of service.
- (2) An employee who, but for this subsection, would not be entitled under subsection (1) to payment in lieu of long service leave because the period referred to in subsection (1) (b) (ii) has not expired, is entitled to payment if the board is satisfied that—
  - (a) the employee has ceased work in the building and construction industry (for a reason other than total incapacity, death or having reached the prescribed retiring age), with the intention of leaving the industry permanently; and
  - (b) the employee intends to reside permanently in another country.
- (3) Where—
  - (a) a registered employee or registered contractor is credited with a period of recognised service of not less than 55 days but less than 10 years; and
  - (b) the employee or contractor ceases work in the building and construction industry because of total incapacity or death;the employee or contractor is entitled to payment in lieu of long service leave in respect of—
  - (c) an amount of long service leave calculated at the rate of the defined fraction of a week's leave for each completed year of service credited to the employee or contractor in the employees and contractors register; and

- (d) for any remaining period of service credited to the employee or contractor in the employees and contractors register—an amount of long service leave equal to the period that bears the same proportion to the defined fraction of a week as that remaining period bears to 1 completed year of service.

#### **54 Payment in lieu of leave on retirement**

Where—

- (a) a registered employee or registered contractor is credited with a period of recognised service of not less than 55 days but less than 10 years; and
- (b) the employee or contractor reaches the prescribed retiring age and, because of reaching that age, ceases to work in the building and construction industry, with the intention of leaving the industry permanently;

the employee or contractor is entitled to payment in lieu of long service leave in respect of—

- (c) an amount of long service leave calculated at the rate of the defined fraction of a week's leave for each completed year of service credited to the employee or contractor in the employees and contractors register; and
- (d) for any remaining period of service credited to the employee or contractor in the employees and contractors register—an amount of long service leave equal to the period that bears the same proportion to the defined fraction of a week as that remaining period bears to 1 completed year of service.

#### **55 Payment for leave**

- (1) A registered employee who has been granted long service leave under section 52, or a registered contractor who is entitled to long service leave, may apply to the board for payment in respect of that leave.



- (2) An application under subsection (1) shall—
- (a) be in writing signed by the applicant; and
  - (b) be lodged with the board; and
  - (c) specify the period of long service leave in respect of which the payment is sought; and
  - (d) in the case of an application by a registered employee—be accompanied by the notice referred to in section 52 (3).
- (3) Where an application is made under subsection (1) and the board is satisfied that the applicant is entitled to long service leave under this Act, the board shall pay to the applicant out of the moneys of the board an amount calculated in accordance with section 57.
- (4) Where—
- (a) an application is lodged not later than 14 days before the applicant becomes entitled to long service leave under this Act; and
  - (b) the applicant makes such a request in the application;
- the board shall pay to the applicant any amount payable under subsection (3) not later than 7 days before the applicant becomes entitled to that long service leave.

**U 56      Payment in lieu of leave**

- (1) Where a registered employee or a registered contractor is entitled to payment in lieu of long service leave under this Act, the employee or contractor may apply to the board for payment accordingly.
- (2) An application under subsection (1) shall—
- (a) be in writing signed by the applicant; and
  - (b) be lodged with the board; and

- (c) in the case of an application by a registered employee or a registered contractor who ceases work in the building and construction industry by reason of total incapacity—be accompanied by the certificate of a registered medical practitioner certifying that the employee or contractor is totally incapacitated for service in the building and construction industry.
- (3) The board may require an applicant referred to in subsection (2) (c) to submit himself or herself to a medical examination by a registered medical practitioner selected by the board for that purpose from a panel of 3 registered medical practitioners nominated by the Capital Territory Group of the Australian Medical Association.
- (4) All fees or charges payable in respect of a medical examination under subsection (3) shall be paid by the board.
- (5) Where an applicant refuses or fails, without reasonable excuse, to comply with a requirement of the board under subsection (3), the board may refuse the application.
- (6) Where an application is made under subsection (1) and the board is satisfied that the registered employee or registered contractor to whom the application relates is entitled to payment in lieu of leave under this Act, the board shall pay to the applicant out of the moneys of the board an amount calculated in accordance with section 57.

**U 56A Payment for service in reciprocating State or Territory**

- (1) If a registered employee or registered contractor—
  - (a) is entitled to long service leave, or payment in lieu of long service leave, in respect of a period of service credited to the employee or contractor in the employees and contractors register; and

- (b) at the time of making an application in respect of that period of service under section 55 or 56, the employee or contractor is or may be entitled, under the corresponding law of a reciprocating State or Territory, to long service leave, or payment in lieu of long service leave, in respect of a period of service in that State or Territory;

the employee or contractor may, when lodging the application, lodge with the board an application for payment in respect of the long service leave, or payment in lieu of the long service leave, to which the employee or contractor is or may be entitled under that corresponding law.

- (2) An application shall—
  - (a) be in writing signed by the applicant; and
  - (b) specify any State or other Territory under a corresponding law of which a period of service has been credited; and
  - (c) in the case of an applicant who has ceased to work in the building and construction industry because of total incapacity—be accompanied by a copy of the registered medical practitioner's certificate referred to in section 56 (2) (c).
- (3) Where the board receives an application in respect of a period of service in a reciprocating State or Territory, the board shall—
  - (a) send particulars of the application, including details of the period of service credited to the applicant in the employees and contractors register, to the reciprocal authority of that State or Territory; and
  - (b) send the reciprocal authority any other relevant information, and copies of any relevant documents, in the possession of the board, including, in the case of an applicant who has ceased to work in the building and construction industry because of total incapacity—

- (i) the copy of the registered medical practitioner's certificate referred to in subsection (2) (c); and
  - (ii) if the applicant submitted to a medical examination required by the board under section 56 (3)—a copy of the examiner's report; and
  - (iii) if the applicant was required to submit to a medical examination under section 56 (3) but refused to do so—advice of that refusal; and
  - (iv) advice as to whether or not the board is satisfied that the applicant is entitled to payment under this Act in respect of the period of service credited to the applicant in the employees and contractors register.
- (4) If the board is advised by the reciprocal authority that the applicant is entitled to payment under the corresponding law of the reciprocating State or Territory, the board shall—
  - (a) pay the applicant, on behalf of the reciprocal authority, the amount specified for the purpose by the reciprocal authority; and
  - (b) notify the reciprocal authority that the payment has been made.
- (5) Where—
  - (a) an applicant under subsection (1) is entitled to long service leave under this Act; and
  - (b) the application under subsection (1) is lodged not later than 28 days before the applicant becomes entitled to that long service leave; and
  - (c) the applicant makes such a request in the application;the board shall pay to the applicant any amount payable under subsection (4) not later than 7 days before the applicant becomes entitled to that long service leave.

**U 56B Payments by reciprocal authority on board's behalf**

(1) If—

- (a) the board receives from a reciprocal authority particulars of an application made to the reciprocal authority by a registered employee or registered contractor for payment in respect of long service leave, or payment in lieu of long service leave, in respect of a period of service credited to the applicant in the employees and contractors register; and
- (b) the board is satisfied that the applicant is entitled to that payment;

the board may authorise the reciprocal authority to pay the applicant, on behalf of the board, the amount calculated by the board in accordance with section 57 as the amount to which the applicant is entitled.

(2) When considering whether or not an applicant is entitled to payment, the board may—

- (a) take account of the particulars and any information or documents received by the board from the reciprocal authority in relation to the application; and
- (b) in the case of an applicant who has ceased to work in the building and construction industry because of total incapacity, if the board thinks it necessary—require the applicant—
  - (i) to produce to the board the certificate of a registered medical practitioner certifying that the applicant is totally incapacitated for work in the building and construction industry; and
  - (ii) to submit to a medical examination by a registered medical practitioner selected by the board from a panel of 3 registered medical practitioners nominated by the Capital Territory Group of the Australian Medical Association.

- (3) All fees or charges payable in respect of a medical examination under subsection (2) (b) (ii) shall be paid by the board.
- (4) If an applicant refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (2) (b) (i) or (ii), the board may refuse to authorise any payment to be made to the applicant.
- (5) Where the board has authorised the reciprocal authority to pay the applicant an amount determined by the board, the board shall, on being notified by the reciprocal authority that the payment has been made, reimburse the reciprocal authority for that amount within 1 month after the day on which the payment was made.

## 57 Amount of payment

- (1) Where an application for payment is made to the board by a person who is or was an employee, in respect of his or her period of service as an employee, the amount of payment to be made to the applicant in respect of service credited to the applicant in the employees and contractors register shall be calculated in accordance with the formula—

$$\text{the defined fraction} \times \frac{D}{220} \times R$$

where:

**D** means the number of days service credited to the applicant in the employees and contractors register in respect of which the applicant is to be paid.

**R** is the weekly average of the ordinary remuneration received by the applicant, being the greater of the following 2 amounts:

- (a) the amount calculated in accordance with the formula:

$$\frac{\text{OR}}{(DS + DA + PH)} \times 5$$

where:

**OR** means the aggregate of the ordinary remuneration recorded in the employees and contractors register as received by the applicant during the assessment time.

**DS** means the number of days service during the assessment time credited to the applicant in the employees and contractors register.

**DA** means the number of days during the assessment time during which the applicant was absent from employment in the building and construction industry and was paid, or was entitled to be paid, ordinary remuneration, or compensation under the *Workers Compensation Act 1951*, by an employer in that industry, being days which are not credited to the applicant as service in the employees and contractors register.

**PH** means the number of public holidays and award holidays during the assessment time.

(b) the amount calculated in accordance with the formula:

$$\frac{OR}{(DS + DA + PH)} \times 5$$

where:

**OR** means the aggregate of the ordinary remuneration recorded in the employees and contractors register as received by the applicant during the 12 month period ending at the termination of the last assessment period before the assessment date.

**DS** means the number of days service during the 12 month period ending at the termination of the last assessment period before the assessment date, being service which is credited to the applicant in the employees and contractors register.

**DA** means the number of days during the 12 month period ending at the termination of the last assessment period before the assessment date during which the applicant was absent from

employment in the building and construction industry and was paid, or was entitled to be paid, ordinary remuneration, or compensation under the *Workers Compensation Act 1951*, by an employer in that industry, being days which are not credited to the applicant as service in the employees and contractors register.

**PH** is the number of public holidays and award holidays during the 12 month period ending at the termination of the last assessment period before the assessment date.

- (2) Where an application for payment is made to a reciprocal authority, the amount of payment to be made to the applicant in respect of service credited to the applicant in the employees and contractors register shall be calculated in accordance with the formula:

$$\text{the defined fraction} \times \frac{D}{20} \times R$$

where:

**D** means the number of days service credited to the applicant in the employees and contractors register in respect of which the applicant is to be paid.

**R** means the amount determined by the reciprocal authority as the weekly average of the remuneration by reference to which payment is to be made to the applicant in respect of the service credited to the applicant in the State or Territory, as the case requires.

- (3) Where an application for payment is made to the board by a person who is or was a registered contractor, in respect of his or her period of service as a registered contractor, the amount of payment to be made to the applicant in respect of service credited to the applicant in the employees and contractors register is the sum of—
- (a) amounts paid by the registered contractor to the board under section 38; and



- (b) interest at the determined rate calculated from the date of receipt of each amount paid under section 38.
- (4) The board shall determine an interim rate from time to time prior to the determination of the rate under subsection (3).
- (5) In this section:

**assessment date** in relation to an applicant, means the date on which the relevant application is received by the board.

**assessment period** means a period in relation to which a notice specifying the applicant as an employee has been lodged under section 37.

**assessment time** means the 2 assessment periods most recently completed before the assessment date, whether or not those periods are consecutive.

**determined rate** means the rate determined by the board on or after 1 July in each year for the previous financial year taking into account the expenses incurred in administering the board, being a rate not less than 75% of the rate of interest expressed as a percentage earned by the board as calculated by the formula—

$$\frac{2I}{(FB + FE) - I} \times 100$$

where:

**FB** means the amount of the total equity of the board at the end of the financial year before the financial year in respect of which the rate is being determined.

**FE** means the amount of the total equity of the board at the end of the financial year in respect of which the rate is being determined.

**I** is the amount of income derived from the investments of the moneys of the board in the financial year in respect of which the rate is being determined.

*total equity*, in relation to the board, means the total assets less the total liabilities of the board ascertained by reference to the audited balance sheet of the board in respect of the relevant financial year.

### **57A Records of payment and service**

Notwithstanding section 40, where the board—

- (a) pays an amount to a registered employee or registered contractor under section 55 or 56; or
- (b) has reimbursed a reciprocal authority under section 56B (5) for an amount paid to a registered employee or registered contractor;

the board may delete from the employees and contractors register the particulars relating to the period of service in respect of which the employee or contractor has been paid, but shall keep another record of that period of service, the amount paid to the employee or contractor for long service leave, or in lieu of long service leave, and the period of long service leave (if any) granted to or taken by the employee or contractor.

### **58 Public holidays not to count as leave**

- (1) This section applies if a public holiday or an award holiday falls during a period of long service leave taken by a registered employee or a contractor.
- (2) The period of long service leave is increased by 1 day for each such holiday.

## Part 9 Miscellaneous

### 59 Review of decisions

- (1) Application may be made to the administrative appeals tribunal for review of a decision by the board—
- (a) refusing to register an employer under section 28; or
  - (b) confirming, under section 36 (4), a decision of the registrar to refuse an application for registration; or
  - (c) refusing to grant an exemption to an employer under section 37 (4); or
  - (d) refusing to allow a further period under section 37 (6) (b); or
  - (e) that it is not satisfied that a person to whom a notice under section 37A (1) relates is a working director; or
  - (f) making a determination under section 41; or
  - (g) refusing to re-register the name of an employee or contractor under section 45 (6); or
  - (h) determining, under section 48 (2), an objection made under section 48 (1); or
  - (i) determining, or refusing to determine, a further period as mentioned in section 52 (1) (a); or
  - (j) that it is not satisfied that an applicant is entitled to payment as mentioned in section 53 (2); or
  - (k) refusing to make a payment under section 55 (3), 56 (6) or 63 (5); or
  - (l) that it is not satisfied that an applicant is entitled to payment as mentioned in section 56A (3) (b) (iv); or

- (m) refusing to authorise a payment to be made under section 56B (1); or
  - (n) as to the amount that would otherwise have been the weekly average of the ordinary remuneration of an applicant as mentioned in section 57 (1) (b).
- (2) Application may be made to the administrative appeals tribunal for review of a decision by the registrar—
- (a) determining, or refusing to determine, a further period as mentioned in section 37 (1); or
  - (b) refusing to remit, under section 37 (7), part or all of an amount payable by the employer under section 37 (6); or
  - (c) determining, or refusing to determine, a further period as mentioned in section 38 (1); or
  - (d) refusing to credit an employee with a period of service under section 42 (8).

### **59A Notification of decisions**

- (1) Where the board or the registrar makes a decision of a kind referred to in section 59, the board or the registrar respectively shall cause notice in writing to be given to the person whose interests are affected by the decision.
- (2) A notice under subsection (1) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **59B Evidentiary certificates**

- (1) In proceedings for an offence against section 37 (1), a certificate signed by the registrar to the effect—

- (a) that an employer was required to lodge a notice under section 37 (1) (a) on or before a date ascertained in accordance with section 37 (1) and specified in the certificate; or
- (b) that an employer was required, under section 37 (1) (b), to pay the prescribed amount in relation to a period specified in the certificate on or before a date ascertained in accordance with section 37 (1) and specified in the certificate; or
- (c) that the registrar did not allow an employer any further period to lodge a notice under section 37 (1) (a), or to pay an amount under section 37 (1) (b), as the case may be; or
- (d) that the registrar allowed an employer the further period specified in the certificate to lodge a notice under section 37 (1) (a), or to pay an amount under section 37 (1) (b), as the case may be; or
- (e) that an employer had or had not lodged a notice under section 37 (1) (a) on or before a date specified in the certificate; or
- (f) that an employer had or had not paid, under section 37 (1) (b), an amount in relation to a period specified in the certificate on or before a date specified in the certificate;

is evidence of the matters stated in the certificate.

- (2) In proceedings for an offence against section 38 (1), a certificate signed by the registrar to the effect—
  - (a) that a registered contractor was required to lodge a notice under section 38 (1) (a) on or before a date ascertained in accordance with section 38 (1) and specified in the certificate; or
  - (b) that a registered contractor was required, under section 38 (1) (b), to pay the prescribed amount in relation to a period specified in the certificate on or before a date

ascertained in accordance with section 38 (1) and specified in the certificate; or

- (c) that the registrar did not allow a registered contractor any further period to lodge a notice under section 38 (1) (a), or to pay an amount under section 38 (1) (b), as the case may be; or
- (d) that the registrar allowed a registered contractor the further period specified in the certificate to lodge a notice under section 38 (1) (a), or to pay an amount under section 38 (1) (b), as the case may be; or
- (e) that a registered contractor had or had not lodged a notice under section 38 (1) (a) on or before a date specified in the certificate; or
- (f) that a registered contractor had or had not paid, under section 38 (1) (b), an amount in relation to a period specified in the certificate on or before a date specified in the certificate;

is evidence of the matters stated in the certificate.

## **60 Inspection of register**

An employer, a registered employee or a person acting on his or her behalf, or a registered contractor may inspect, and obtain a certified copy of, an entry in a register, being an entry that relates to that employer, employee or contractor, as the case may be.

## **61 No contracting out**

- (1) Subject to subsection (2), this Act has effect notwithstanding any award or agreement to the contrary.
- (2) Nothing in this Act affects the operation of an award or agreement to the extent that the award or agreement confers on a registered employee rights that are more advantageous to the employee than the rights conferred on the employee by this Act.

**62 Declaration of corresponding laws**

- (1) Where a law of a State provides for long service benefits for employees or contractors engaged in the building and construction industry, being benefits that are the same as or similar to the benefits provided by this Act, the Minister may, on the recommendation of the board in writing declare the law to be a corresponding law for this Act.

- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) For this Act—

(a) the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and

(b) the *Long Service Leave (Building Industry) Act 1975* (SA); and

(c) the *Construction Industry Long Service Leave Act 1983* (Vic);

shall each be deemed to have been declared a corresponding law on 29 September 1986.

**63 Benefits under Long Service Leave Act**

- (1) Where a registered employee—

(a) is an employee within the meaning of the Long Service Leave Act or a prescribed law; and

(b) at any time after 1 October 1981, became or becomes entitled to take long service benefits under the Long Service Leave Act or the prescribed law in respect of a period of service in the ACT in the building and construction industry;

the employee shall elect whether to take the benefits provided under either the Long Service Leave Act or the prescribed law, or the benefits provided under either this Act or the corresponding law of a reciprocating State or Territory, in respect of the period of service.

- (2) Where a registered employee makes an election under subsection (1), he or she shall notify the board in writing of the nature of his or her election and the period of service in relation to which the election is made.
- (3) A registered employee who elects under subsection (1) to take long service benefits under the Long Service Leave Act or a prescribed law in respect of any period of service in the building and construction industry shall not be credited in the employees and contractors register with the period of service referred to in section 43 or 44 and the board shall remove from that register any other period with which the employee is credited in respect of that period of service.
- (4) Where an employer makes a payment under the Long Service Leave Act, section 8 or under a prescribed law for, or in lieu of, long service leave to, or in relation to, a registered employee who has elected to take long service benefits under that Act or the prescribed law in respect of a period of service in the building and construction industry, the employer may apply to the board for payment to him or her of the prescribed amount.
- (5) Where an application is made to the board by an employer under subsection (4) and the board is satisfied that the amount paid by the employer was properly paid under the Long Service Leave Act, section 8 or under the prescribed law, the board shall pay to the employer out of the moneys of the board the prescribed amount less any amount outstanding that is payable by the employer to the board.
- (6) For subsections (4) and (5), the prescribed amount is a proportion of the amount that would have been payable by the board to the registered employee if the employee had been entitled to payment for long service leave under this Act in respect of the period specified by the employee under subsection (2), being a proportion calculated in accordance with the formula—



$$\frac{P1}{P2}$$

where:

**P1** is the number of working days in the period that commenced on 1 October 1981 and ending on the date on which the employee became or becomes entitled to Long Service Benefits under the Long Service Leave Act or the prescribed law.

**P2** is the number of working days in the period specified by the employee under subsection (2).

#### **64 Agreements with other States**

Where the Minister has declared a law of a State to be a corresponding law for this Act, the Minister may make a reciprocal agreement or reciprocal arrangement with the Minister of State of that State responsible for the administration of that law, being a reciprocal agreement or reciprocal arrangement relating to—

- (a) payments for, or in lieu of, long service leave; and
- (b) the exchange of information concerning service credits and entitlements to long service benefits between the board and any equivalent authority established under that law; and
- (c) such other matters relating to long service benefits as the Minister thinks necessary or convenient.

#### **65 Approved forms**

- (1) The registrar may, in writing, approve forms for this Act.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**66                      Regulation-making power**

The Executive may make regulations for this Act.

*Note*           Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Long Service Leave (Building and Construction Industry) Act 1981* was originally the *Long Service Leave (Building and Construction Industry) Ordinance 1981*. It became an ACT Act on self-government (11 May 1989).

This Act was originally a Commonwealth ordinance—the *Long Service Leave (Building and Construction Industry) Ordinance 1981* No 23 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

#### Legislation before becoming Territory enactment

##### **Long Service Leave (Building and Construction Industry) Act 1981 No 23**

notified 10 September 1981

pt 1 and 2 (ss 1-25) commenced 10 September 1981 (s 2 (1))

remainder (ss 26-66) commenced 1 October 1981 (s 2 (2) and Gaz 1981 No S203)

as amended by

##### **Long Service Leave (Building and Construction Industry) Ordinance 1984 No 12**

notified 9 May 1984

commenced 9 May 1984

##### **Long Service Leave (Building and Construction Industry) (Amendment) Ordinance (No 2) 1984 No 56**

notified 19 October 1984

commenced 19 October 1984

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance 1986 No 55**

notified 11 September 1986  
commenced 9 May 1984

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance 1987 No 16**

notified 1 May 1987  
commenced 1 November 1987 (Cwlth Gaz 1987 No GN25)

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance (No 2) 1987 No 74**

notified 22 December 1987  
commenced 22 December 1987

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance 1988 No 22**

notified 18 May 1988  
commenced 18 May 1988

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance (No 2) 1988 No 49**

notified 3 August 1988  
commenced 3 August 1988

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance (No 3) 1988 No 64**

notified 21 September 1988  
commenced 21 September 1988

**Long Service Leave (Building and Construction Industry)  
(Amendment) Ordinance (No 4) 1988 No 74**

notified 19 October 1988  
commenced 19 October 1988

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989  
No S164)

**Legislation after becoming Territory enactment**

**Long Service Leave (Building and Construction Industry)  
(Amendment) Act 1990 No 9**

notified 9 May 1990 (Gaz 1990 No S20)  
ss 1-4, 7 and 13 taken to commence 1 January 1990 (s 2 (1))  
remainder (ss 5, 6, 8-12) commenced 9 May 1990 (s 2 (2))

**Statutory Authorities (Audit Arrangements) Act 1990 No 25 pt 3**

notified 22 June 1990 (Gaz 1990 No S29)  
s 1, s 2 commenced 22 June 1990 (s 2 (1))  
pt 3 commenced 22 June 1990 (s 2 (2) and Gaz 1990 No S35)

**Workers' Compensation (Consequential Amendments) Act 1991  
No 106 sch**

notified 15 January 1992 (Gaz 1992 No S3)  
s 1, s 2 commenced 15 January 1992 (s 2 (1))  
sch commenced 22 January 1992 (s 2 (2) and see Gaz 1992 No S9)

**Long Service Leave (Building and Construction Industry)  
(Amendment) Act 1992 No 15**

notified 2 June 1992 (Gaz 1992 No S62)  
commenced 2 June 1992

**Long Service Leave (Building and Construction Industry)  
(Amendment) Act 1993 No 39**

notified 29 June 1993 (Gaz 1993 No S111)  
s 1, s 2 commenced 29 June 1993 (s 2 (1))  
remainder (ss 3-32) commenced 1 July 1993 (s 2 (2) and Gaz 1993  
No S151)

**Long Service Leave (Building and Construction Industry)  
(Amendment) Act (No 2) 1993 No 102**

notified 24 December 1993 (Gaz 1993 No S267)  
commenced 1 January 1994 (s 2)

**Public Sector Management (Consequential and Transitional  
Provisions) Act 1994 No 38 sch 1 pt 55**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 55 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (Gaz 1994 No S269)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

**Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 16**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Long Service Leave (Building and Construction Industry) (Amendment) Act 1996 No 66 (as am by 1997 No 98 s 4, s 5)**

notified 3 December 1996 (Gaz 1996 No S321)  
ss 1-3 commenced 3 December 1996 (s 2 (1))  
s 5 taken to commence 1 January 1996 (s 2 (2))  
remainder (s 4, s 6) commenced 30 June 1998 (s 2 (3))

**Long Service Leave (Building and Construction Industry) (Amendment) Act (No 2) 1996 No 80**

notified 20 December 1996 (Gaz 1996 No S328)  
commenced 20 December 1996 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

## Endnotes

3 Legislation history

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**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 230**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 230 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.36**

notified 5 September 2001 (Gaz 2001 No S65)

commenced 5 September 2001 (s 2 (1))

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

**Long Service Leave Legislation Amendment Act 2003 A2003-45 pt 3**

notified LR 2 October 2003

s 1, s 2 commenced 2 October 2003 (LA s 75 (1))

pt 3 commenced 3 October 2003 (s 2)

**Health Professionals Legislation Amendment Act 2004 A2004-39  
sch 5 pt 5.10**

notified LR 8 July 2004

s 1, s 2 commenced 8 July 2004 (LA s 75 (1))

sch 5 pt 5.10 awaiting commencement (s 2 and see Health Professionals Act 2004 A2004-38 s 2)

*Note* default commencement under s 2: 8 July 2005

**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.34**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.34 commenced 2 June 2005 (s 2 (1))



## 4 Amendment history

### Commencement

s 2 om 2001 No 44 amdt 1.2689

### Interpretation for Act

s 3 am 1984 No 12; 1984 No 56; 1986 No 55; 1987 No 16; 1987 No 74; 1988 No 64; 1993 No 39 sch; ss renum R5 LA  
 def **agreement** am 1991 No 106 sch  
     sub 2001 No 56 amdt 3.446  
 def **award** am 1991 No 106 sch  
     sub 2001 No 56 amdt 3.446  
 def **board** am 1993 No 39 s 3  
 def **chairman** am 1992 No 15 s 4  
 def **contractor** am 1993 No 39 sch  
 def **defined fraction** ins 1996 No 80 s 4  
 def **deputy registrar** sub 1994 No 97 sch pt 1  
 def **determination** sub 1989 No 38 sch 1  
 def **employee** am 1989 No 38 sch 1; 1993 No 39 s 3  
 def **employer** am 1989 No 38 sch 1; 1993 No 39 s 3  
 def **ordinary remuneration** am 1993 No 39 s 3, sch  
 def **registered medical practitioner** om A2004-39 amdt 5.14  
 def **registrar** sub 1994 No 97 sch pt 1  
 def **tribunal** ins 1989 No 38 sch 1  
     om 1994 No 60 sch 1  
 def **working director** ins 1993 No 39 s 3

### The board

div 2.1 hdg (prev pt 2 div 1 hdg) renum R5 LA

### Establishment of board etc

s 4 am 1993 No 39 s 5

### Independence of board

s 5 am 1989 No 38 sch 1

### Functions of board

s 6 am 1987 No 16; 1990 No 9 s 4; 1993 No 39 s 6; 1996 No 66 s 4

### Powers of board

s 7 am 1987 No 16; 1994 No 38 sch 1 pt 55; pars renum R5 LA

### Delegation by board

s 7A ins 1987 No 74  
 am 1989 No 38 sch 1; 1990 No 9 s 5

### Constitution of board

s 8 am 1988 No 22; 1992 No 15 s 4; 1993 No 39 sch

## Endnotes

### 4 Amendment history

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#### **Acting members of board**

s 9 am 1988 No 22; 1990 No 9 s 6; 1993 No 39 sch; ss renum R5  
LA

#### **Resignation**

s 10 am 1993 No 39 sch

#### **Termination of appointment**

s 11 am 1993 No 39 sch

#### **Fees and allowances**

s 12 om 1997 No 41 sch 1

#### **Meetings**

s 13 sub 1988 No 22  
am 1992 No 15 s 4; 1993 No 39 sch

#### **Disclosure of interest**

s 14 am 1993 No 39 sch; 1998 No 54 sch

#### **Protection of members**

s 16 am 1993 No 39 sch

#### **The registrar and inspectors**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R5 LA

#### **Registrar**

s 17 am 1989 No 38 sch 1  
sub 1994 No 97 sch pt 1

#### **Deputy registrar**

s 17A ins 1994 No 97 sch pt 1

#### **Inspectors**

s 18 am 1987 No 74; 1988 No 74; 1989 No 38 sch 1; 1993 No 39  
sch

#### **Return of identity cards**

s 18A ins 1988 No 74  
am 1998 No 54 sch

#### **Powers of inspector**

s 19 am 1987 No 74; 1988 No 74; 1993 No 39 sch; 1994 No 81 sch

#### **Construction industry training fund**

pt 2 div 2A hdg ins 1990 No 9 s 7  
am 1993 No 39 s 7  
om 1996 No 66 s 6

**Interpretation**

s 19A ins 1990 No 9 s 7  
 def **fund** ins 1990 No 9 s 7  
 am 1993 No 39 s 8  
 om 1996 No 66 s 6

**Establishment**

s 19B ins 1990 No 9 s 7  
 am 1993 No 39 s 9  
 om 1996 No 66 s 6

**Powers of board**

s 19C ins 1990 No 9 s 7  
 am 1993 No 39 s 10; 1996 No 66 s 5  
 om 1996 No 66 s 6

**Application of fund money**

s 19D ins 1990 No 9 s 7  
 am 1993 No 39 s 11  
 om 1996 No 66 s 6

**Finances**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R5 LA

**Moneys of board**

s 20 am 1987 No 16

**Borrowing by board**

s 22 am 1989 No 38 sch 1

**Contracts**

s 23 am 1987 No 74; 1990 No 9 s 8; 1993 No 39 s 12; 1996 No 26  
 sch pt 16

**Triennial investigation by actuary**

s 24 am 1990 No 9 s 9

**Refunds**

s 25 am 1987 No 16  
 om 1996 No 26 sch pt 16

**Audit Act to apply**

s 25A ins 1990 No 25 s 5  
 om 1996 No 26 sch pt 16

**Writing off certain moneys and stores**

s 25B ins 1990 No 25 s 5  
 sub 1993 No 39 s 13  
 om 1996 No 26 sch pt 16

## Endnotes

4 Amendment history

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### **Staff**

div 2.4 hdg ins 1992 No 15 s 3  
sub 1994 No 38 sch 1 pt 55  
(prev pt 2 div 4 hdg) renum R5 LA

### **Staff**

s 25C ins 1992 No 15 s 3  
sub 1994 No 38 sch 1 pt 55

### **Employment practices**

s 25D ins 1992 No 15 s 3  
om 1994 No 38 sch 1 pt 55

### **Application for registration**

s 27 am 1984 No 12; 1993 No 39 s 14; 1994 No 81 sch; pars  
renum R5 LA

### **Registration of employer**

s 28 am 1984 No 12

### **Certificate of registration**

s 29 am 1993 No 39 sch

### **Change of address to be notified**

s 30 am 1994 No 81 sch

### **Application for registration by employee or contractor**

s 32 am 1984 No 12; 1987 No 16; 1987 No 74; 1988 No 74; 1993  
No 39 s 15, sch; pars renum R5 LA

### **Application for registration by persons not engaged in industry**

s 33 om 1987 No 16

### **Application by employer for registration of employee**

s 34 am 1984 No 12; 1987 No 74; 1993 No 39 s 16, sch; pars  
renum R5 LA

### **Extension of time of employee or contractor**

s 35 am 1987 No 16  
om 1987 No 74

### **Registration**

s 36 am 1984 No 12; 1987 No 16; 1993 No 39 s 17, sch; pars  
renum R5 LA

### **Periodic notices and payments by employers**

s 37 am 1987 No 16; 1987 No 74; 1993 No 39 s 18, sch; 1993  
No 102 s 4; 1994 No 81 sch; A2005-20 amdt 3.189,  
amdt 3.190; ss renum R7 LA (see A2005-20 amdt 3.191)

**Exemption from payments for working directors**

s 37A ins 1993 No 39 s 19  
am 2001 No 44 amdt 1.2690-1.2693; pars renum R5 LA

**Periodic notices and payments by registered contractors**

s 38 am 1987 No 74; 1993 No 39 sch; 1994 No 81 sch; 2001 No 44  
amdt 1.2694, amdt 1.2695; A2005-20 amdt 3.192

**Employers to keep records**

s 39 am 1984 No 12; 1993 No 39 s 20, sch; 1994 No 81 sch

**Particulars in employees and contractors register**

s 40 am 1987 No 16; 1993 No 39 s 21, sch

**Determination and entry of ordinary remuneration by board**

s 41 am 1987 No 74; 1993 No 39 sch

**Service credits**

s 42 am 1984 No 12; 1987 No 16; 1987 No 74; 1991 No 106 sch;  
1993 No 39 s 22, sch; ss and pars renum R5 LA; [A2004-39](#)  
[amdt 5.16](#)

**Bonus credits for employees and contractors**

s 43 am 1987 No 16

**Bonus credits for apprentices**

s 44 am 1987 No 16

**Removing names from employees and contractors register**

s 45 am 1987 No 16; 1987 No 74; 1993 No 39 s 23, sch; ss renum  
R5 LA

**Annual certificates for employees and contractors**

s 46 am 1987 No 16; 1993 No 39 s 24

**Annual certificates for employers**

s 47 am 1987 No 16; 1993 No 39 sch

**Year of service**

s 50 sub 1987 No 16

**Amount of leave**

s 51 am 1987 No 16; 1993 No 39 sch; 1996 No 80 s 5

**Grant of leave**

s 52 am 1994 No 81 sch

**Entitlement to payment in lieu of leave**

s 53 sub 1987 No 16  
am 1993 No 39 s 25, sch; 1996 No 80 s 6; ss and pars renum  
R5 LA

## Endnotes

4 Amendment history

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### **Payment in lieu of leave on retirement**

s 54 sub 1987 No 16  
am 1993 No 39 sch; 1996 No 80 s 7

### **Payment for leave**

s 55 am 1987 No 16; 1990 No 9 s 10

### **Payment in lieu of leave**

s 56 am 1987 No 16; 1993 No 39 sch; A2004-39 amdt 5.16, amdt 5.17

### **Payment for service in reciprocating State or Territory**

s 56A ins 1987 No 16  
am 1990 No 9 s 11; 1993 No 39 s 26; A2005-20 amdt 5.15

### **Payments by reciprocal authority on board's behalf**

s 56B ins 1987 No 16  
am 1993 No 39 sch; A2004-39 amdt 5.16, amdt 5.17

### **Amount of payment**

s 57 sub 1987 No 16 s 12  
am 1988 No 49; 1990 No 9; 1991 No 106 sch; 1993 No 39  
s 27; 1996 No 80 s 8; ss renum R5 LA

### **Records of payment and service**

s 57A ins 1987 No 16

### **Public holidays not to count as leave**

s 58 sub A2003-45 s 7

### **Review of decisions**

s 59 am 1987 No 16  
sub 1987 No 74  
am 1988 No 49; 1989 No 38 sch 1; 1993 No 39 s 28; 1994 No  
60 sch 1; pars renum R5 LA

### **Notification of decisions**

s 59A ins 1987 No 74  
am 1989 No 38 sch 1; 1994 No 60 sch 1

### **Evidentiary certificates**

s 59B ins 1987 No 74

### **Inspection of register**

s 60 am 1993 No 39 s 29

### **Declaration of corresponding laws**

s 62 am 1987 No 16; 2001 No 44 amdts 1.2696-1.2698; ss renum  
R5 LA (see 2001 No 44 amdt 1.2699)

### **Benefits under Long Service Leave Act**

s 63 am 1987 No 16; 1993 No 39 s 30, sch

**Agreements with other States**

s 64 hdg am 2001 No 44 amdt 1.2700  
 s 64 am 1987 No 16; 2001 No 44 amdt 1.2701, amdt 1.2702

**Approved forms**

s 65 om 1987 No 16  
 ins 2001 No 44 amdt 1.2703

**Regulation-making power**

s 66 am 1989 No 38 sch 1  
 sub 2001 No 44 amdt 1.2703

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1992 No 15	2 June 1992
2	Act 1993 No 102	1 January 1994
3	Act 1994 No 97	31 January 1995
4	Act 1998 No 54	30 June 1998
5	Act 2001 No 56	8 February 2002
5 (RI)	A2002-49 ‡	12 February 2003
6	A2003-45	3 October 2003

‡ includes retrospective amendments by A2002-49

## Endnotes

6 Uncommenced amendments

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### 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<b>Health Professionals Legislation Amendment Act 2004 A2004-39 sch 5 pt 5.10</b>
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## Part 5.10 Long Service Leave (Building and Construction Industry) Act 1981

**[5.14] Section 3 (1), definition of *registered medical practitioner***

*omit*

**[5.15] Section 56A**

*omit*

registered medical practitioner's

*substitute*

doctor's

**[5.16] Further amendments, mentions of *registered medical practitioner***

*omit*

registered medical practitioner

*substitute*

doctor

*in*

- section 42 (2) (c)



- section 56
- section 56B (2) (b)

**[5.17] Further amendments, mentions of *registered medical practitioners***

*omit*

registered medical practitioners

*substitute*

doctors

*in*

- section 56 (3)
- section 56B (2) (b) (ii)

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