



Australian Capital Territory

# **Long Service Leave (Portable Schemes) Act 2009**

**A2009-25**

**Republication No 19**

**Effective: 8 April 2020 – 13 May 2020**

Republication date: 8 April 2020

Last amendment made by [A2020-11](#)

## About this republication

### The republished law

This is a republication of the *Long Service Leave (Portable Schemes) Act 2009* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 8 April 2020. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 8 April 2020.

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, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### 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 the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

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Australian Capital Territory

# Long Service Leave (Portable Schemes) Act 2009

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An Act to provide for the portability of long service entitlements in certain industries, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Long Service Leave (Portable Schemes) Act 2009*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*reviewable decision*, for part 9 (Notification and review of decisions)—see section 80.’ means that the term ‘reviewable decision’ is defined in that section for part 9.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Key concepts

### 6 What is a *covered industry*?

Each of the following is a *covered industry*:

- (a) the building and construction industry;
- (b) the contract cleaning industry;
- (c) the community sector industry;
- (d) the security industry.

*Note 1 Building and construction industry*—see sch 1, s 1.1.

*Note 2 Contract cleaning industry*—see sch 2, s 2.1.

*Note 3 Community sector industry*—see sch 3, s 3.1.

*Note 4 Security industry*—see sch 4, s 4.1.

### 7 Who is an *employer*?

- (1) An *employer*, for a covered industry, is a person engaged in the industry in the ACT who—
  - (a) employs someone else (whether in the ACT or elsewhere) to carry out work in the industry; or
  - (b) is declared to be an employer for the industry under section 12 (Declarations by Minister—additional coverage of Act).
- (2) Also, a person is an *employer* for a covered industry if—
  - (a) the person employs or engages someone else (a *worker*) to carry out work in the industry for another person engaged in the industry in the ACT for a fee or reward; and

- (b) there is no contract to carry out the work between the worker and the person for whom the work is carried out.

*Note* This section does not make an employment agent the employer of those for whom the agency finds work if the workers are engaged directly by the person for whom the work is to be carried out.

- (3) However, the following are not *employers*:

- (a) the Territory;
- (b) the Commonwealth;
- (c) the Australian National University;
- (d) the University of Canberra;
- (e) for a stated covered industry—an entity prescribed in the covered industry schedule for the covered industry;
- (f) a person declared not to be an employer for the industry under section 13;
- (g) a person prescribed by regulation.

*Note 1* *Covered industry schedule*—see the dictionary.

*Note 2* Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

## 8 Who is a *worker*?

Each of the following is a *worker* for a covered industry:

- (a) an employee for the industry;
- (b) a voluntary member for the industry.

*Note 1* An individual may be declared by the Minister to be an employee or a voluntary member for a covered industry (see s 12).

*Note 2* An individual may be declared by the Minister not to be an employee or a voluntary member for a covered industry (see s 13).

## 9 Who is an *employee*?

(1) An individual is an *employee* for a covered industry if the individual—

- (a) is—
  - (i) employed by an employer for the industry (whether in the ACT or elsewhere); or
  - (ii) declared to be an employee for the industry under section 12; and
- (b) is not declared not to be an employee for the industry under section 13.

(2) In this section:

*employed* includes employed as—

- (a) a full-time employee; or
- (b) a part-time employee; or
- (c) a casual employee; or
- (d) a person remunerated at piecework rates or completely or partly by commission; or



(e) an apprentice.

*Note* For this Act, an individual declared to be an employee of a stated employer is taken to be employed by the employer (see s 12 (5)).

## 10 Who is a *voluntary member*?

- (1) An individual is a *voluntary member* for a covered industry if—
- (a) the individual is—
    - (i) a contractor; or
    - (ii) a working director; or
    - (iii) declared to be a voluntary member for the industry under section 12; and
  - (b) the individual is not declared not to be a voluntary member for the industry under section 13.
- (2) In this section:

*contractor* means an individual (other than an employee) who carries out work in the industry for another person for fee or reward on the individual's own account.

*working director* means a person who is both a director and an employee of a company.

## 11 What is *work*?

In this Act:

*work*, in a covered industry—

- (a) means one of the following:
- (i) building and construction work;
  - (ii) cleaning work;
  - (iii) community sector work;

- (iv) security work;
- (v) work, or an activity, declared to be work under section 12;  
but

*Note 1* **Building and construction work**—see sch 1, s 1.2.

*Note 2* **Cleaning work**—see sch 2, s 2.2.

*Note 3* **Community sector work**—see sch 3, s 3.2.

*Note 4* **Security work**—see sch 4, s 4.2.

- (b) includes work in a covered industry carried out outside the ACT only if—
  - (i) if the work is carried out by an employee—the employer—
    - (A) gives the authority a quarterly return under section 49 in relation to the work; and
    - (B) pays the authority the levy payable by the employer under section 50 for the quarter; and
  - (ii) if the work is carried out by a voluntary member—the voluntary member—
    - (A) gives the authority a quarterly return under section 54 in relation to the work; and
    - (B) pays the authority the levy payable by the voluntary member under section 55 for the quarter; and
- (c) does not include work or an activity declared not to be work for the industry under section 13.

## 12 Declarations by Minister—additional coverage of Act

- (1) This section applies if the Minister is satisfied on reasonable grounds that the Act should apply to a person or work or an activity to which the Act does not apply.
- (2) The Minister may declare, for this Act—
  - (a) a person to be an employer for a covered industry; or
  - (b) a person to be an employee, or an employee of a stated employer, for a covered industry; or
  - (c) a person to be a voluntary member for a covered industry; or
  - (d) work, or an activity, to be work in a covered industry.
- (3) However, the Minister may only make a declaration that is consistent with the objects of the Act.
- (4) A declaration must state the following:
  - (a) the person or work to which the declaration applies;
  - (b) the period of the declaration;
  - (c) any conditions of the declaration.

*Note* Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (5) A person declared to be an employee of a stated employer is taken to be employed by the employer.
- (6) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

### 13 Declarations by Minister—limitation to coverage of Act

- (1) This section applies if the Minister is satisfied on reasonable grounds that the Act should not apply to a person or work or an activity to which the Act applies.
- (2) The Minister may declare, for this Act—
  - (a) a person not to be an employer for a covered industry; or
  - (b) a person not to be an employee, or an employee of a stated employer, for a covered industry; or
  - (c) a person not to be a voluntary member for a covered industry; or
  - (d) work, or an activity, not to be work in a covered industry.
- (3) However, the Minister may only make a declaration that is consistent with the objects of the Act.
- (4) A declaration must state the following:
  - (a) the person or work to which the declaration applies;
  - (b) the period of the declaration;
  - (c) any conditions of the declaration.

*Note* Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (5) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## 14 Meaning of *day*

(1) In this Act:

*day*—

- (a) in relation to a worker covered by an award or agreement—has the same meaning as in the award or agreement; or
  - (b) in relation to a worker to whom a declaration under subsection (2) applies—means the period stated in the declaration; or
  - (c) in any other case—means 24 hours.
- (2) For this Act, the Minister may declare a stated period to be a day for a worker unless the work is covered by an award.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## 15 Meaning of *registration day*

In this Act:

*registration day*—

- (a) for a worker who applies to be registered under section 40—means the day the application for registration as a worker for a covered industry was received by the registrar; and
- (b) for a worker who the registrar registers under section 44—means the day the worker's name is entered in the workers register; and
- (c) for a person for whom a direction is made under section 45 (3) (b)—means the day the direction is given; and
- (d) for an employer who is registered—means the day the application for registration as an employer for a covered industry was received by the registrar.

## 15A Entitlement to long service leave

A worker in a covered industry is entitled to long service leave payments in accordance with a covered industry schedule if the worker—

- (a) is employed or engaged by a registered employer for the covered industry; and

*Note* For the registration of employers see div 4.1.

- (b) is a registered worker for the covered industry.

*Note* For the registration of workers see div 4.2.

## **Part 4 Registration**

### **Division 4.1 Registration of employers**

#### **30 Employers registration**

- (1) The authority must keep a register of registered employers for each covered industry (an *employers register*).
- (2) The register may be kept in any form, including electronically, that the authority decides.
- (3) The registrar may correct a mistake, error or omission in the employers register.
- (4) The registrar may change a detail included in the register to keep the register up-to-date.

#### **31 Application for registration by employers**

- (1) An employer for a covered industry must apply to the registrar for registration on the employers register not later than—
  - (a) 1 month after becoming an employer for the industry; or
  - (b) the end of any additional time the registrar allows.

Maximum penalty: 50 penalty units.

*Note 1* Under this part, applications may be made, and notice may be given, electronically in certain circumstances (see [Electronic Transactions Act 2001](#)).

*Note 2* If a form is approved under s 92 for an application, the form must be used.

*Note 3* The registrar may extend the time for registration on application by the employer before or after the period in s (1) (a) ends (see [Legislation Act](#), s 151C).

- (2) An offence against this section is a strict liability offence.

### **32 Dealing with applications for registration as employer**

- (1) This section applies if a person applies to the registrar under section 31 for registration as an employer for a covered industry.
- (2) The registrar must—
  - (a) register the person as an employer for the industry if satisfied the person is an employer for the industry; or
  - (b) in any other case—refuse to register the person as an employer for the industry.

### **34 Registration as employer**

A person is registered as an employer for a covered industry when the registrar enters the following particulars in the employers register for the industry:

- (a) the person's name and address;
- (b) the person's trading name (if any);
- (c) the person's ABN (if any);
- (d) the address of the person's principal place of business;
- (e) if the person is a corporation—the corporation's ACN;
- (f) the person's registration day as an employer;
- (g) any other relevant particulars the governing board reasonably directs.

*Note* **Registration day**—see s 15.

### **35 Certificate of registration for employers**

- (1) The registrar must give a person registered as an employer for a covered industry a certificate of registration that includes—
  - (a) the registration particulars mentioned in section 34; and



(b) the person's registration day.

*Note 1* The certificate must be given to the employer as soon as possible after the employer is registered (see [Legislation Act](#), s 151B).

*Note 2* **Registration day**—see s 15.

*Note 3* If a form is approved under s 92 for a certificate, the form must be used.

(2) If satisfied that an employer's certificate of registration has been stolen, lost or destroyed, the registrar must give the employer a replacement certificate of registration.

*Note* A fee may be determined under s 91 for this provision.

(3) An employer's certificate of registration is evidence of the matters stated in the certificate.

### **36 Registered employer to notify change of details**

(1) If the details shown on a registered employer's certificate of registration change, the employer must, not later than 7 days after the day the change happens—

- (a) tell the registrar, in writing, of the change; and
- (b) return the certificate to the registrar.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

(3) The registrar must give the employer an amended certificate of registration.

### **37 Appeals against refusal to register as employer**

(1) This section applies if the registrar refuses to register a person as an employer under section 32 (Dealing with applications for registration as employer).

(2) The applicant for registration may apply to the governing board for review of the registrar's decision.

*Note* If a form is approved under s 92 for an application, the form must be used.

(3) The application must be in writing and be made not later than 2 months after the day notice of the decision is received by the applicant.

(4) If an application is made under subsection (2), the governing board must—

(a) if satisfied that the person to whom the application relates is an employer for a covered industry—direct the registrar to register the person as an employer for the covered industry; or

(b) in any other case—confirm the registrar's decision to refuse registration.

(5) The governing board must give the applicant written notice of the decision not later than 7 days after the day the decision is made.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.

### **38 Order to apply for registration**

(1) If a court convicts a person, or finds the person guilty, of an offence against section 31 (Application for registration by employers), the court may, in addition to imposing a penalty on the person, order the person to—

(a) apply to the registrar for registration as an employer for a covered industry within a stated time; and

- (b) pay the governing board the amount that would have been payable by the person under section 50 (Levy payments by employers) or section 55 (Levy payments by voluntary members) if the person had complied with this Act since becoming an employer.
- (2) A person who contravenes an order under subsection (1) commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

## **Division 4.2                      Registration of workers**

### **39                      Workers register**

- (1) The authority must keep a register of registered workers for each covered industry (a *workers register*).
- (2) The register may be kept in any form, including electronically, that the authority decides.
- (3) The registrar may correct a mistake, error or omission in the workers register.
- (4) The registrar may change a detail included in the register to keep the register up-to-date.

### **40                      Applications for registration by workers**

A person may apply to the registrar for registration as a worker for a covered industry.

*Note*            If a form is approved under s 92 for an application, the form must be used.

#### **41 Application by employers for registration of employee**

- (1) This section applies if a person—
  - (a) is an employee of an employer for a covered industry; and
  - (b) is not registered under this Act; and
  - (c) does not apply for registration under section 40 before the end of 3 months after the day the person starts to work for the employer.
- (2) The employer must register the employee at the time the employer next submits a quarterly return under section 49 (Quarterly returns by employers).

*Note* If a form is approved under s 92 for this provision, the form must be used.

#### **42 Dealing with applications for registration as worker**

- (1) This section applies if—
  - (a) a person applies under section 40 for registration as a worker for a covered industry; or
  - (b) an employer applies under section 41 for the registration of a person as a worker for a covered industry.
- (2) The registrar must—
  - (a) if satisfied that the person is a worker for the covered industry—register the person as a worker for the industry; or
  - (b) in any other case—refuse to register the person as a worker for the industry.

#### **43 Notice of registrar decisions**

- (1) The registrar must, not later than 7 days after making a decision under section 42, give written notice of the decision to—
  - (a) the applicant for registration; and

- (b) for an employer application—the person in relation to whom the application was made.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (2) If the registrar’s decision is to register the person as a worker for a covered industry, the notice must state the person’s registration day.
- (3) If the registrar’s decision is to refuse to register the person as a worker, the notice must include—
  - (a) an explanation for the decision; and
  - (b) a statement of the effect of section 45.

#### **44 Registrar may register employee without application**

The registrar may register a person as a worker if—

- (a) the person is not registered as a worker; and
- (b) the registrar—
  - (i) becomes aware of information (other than because of an application under section 40) indicating that the person is, or was, a worker for a covered industry; and
  - (ii) is satisfied that the person should be registered as a worker for the industry.

##### **Example**

a return under s 49 shows the person as an employee for a covered industry

*Note* The registration day for a worker registered under this section is the day the person’s name is entered on the workers register (see s 15).

#### **45 Appeals against refusal to register as worker**

- (1) This section applies if the registrar refuses to register a person as a worker for a covered industry under section 42 (Dealing with applications for registration as worker).
- (2) The following people may apply to the governing board for review of the registrar's decision:
  - (a) the applicant for registration;
  - (b) for an employer application—the person in relation to whom the application was made.

*Note* If a form is approved under s 92 for this provision, the form must be used.

- (3) If an application is made under subsection (2), the governing board must—
  - (a) confirm the registrar's decision to refuse registration; or
  - (b) direct the registrar to register the person as a worker.
- (4) The governing board must give the person written notice of the decision not later than 7 days after the day the decision is made.

#### **46 Registration as worker**

- (1) A person is registered as a worker for a covered industry when the registrar enters the following particulars in the workers register for the industry:
  - (a) the person's name, address and date of birth;
  - (b) the name and address of the principal place of business of the person's employer (if any);
  - (c) the person's registration day as a worker;
  - (d) any other relevant particulars the governing board reasonably directs.

- (2) However, a person is taken to become a registered worker on the person's registration day as a worker.

*Note*     **Registration day**—see s 15.

#### **47     Service credit—employee's prior service**

- (1) This section applies in relation to an employee's service in a covered industry for work done in the industry before the employee became a registered worker for the industry.
- (2) The registrar may credit the employee with 1 day of service in the workers register for the covered industry for each day of the service if the employee's employer has, in relation to the employee for the day, given the authority—
- (a) a return under section 49 (Quarterly returns by employers) that includes the employee; and
  - (b) payment of the levy under section 50 (Levy payments by employers) for the return.
- (3) If subsection (2) does not apply, the registrar may credit the employee with 1 day of service in the workers register for the covered industry for each day of the employee's service in the covered industry, up to a maximum of 1 year, before the employee's registration if the registrar is satisfied that the person was employed in the covered industry.

##### **Example**

The registrar is satisfied that Joe, before his registration day, had separate periods of service as an employee in the contract cleaning industry of 25 and 125 days. The registrar may credit Joe in the workers register for the contract cleaning industry with 150 days (being less than 1 year) of service.

- (4) To remove any doubt, an employee is not entitled to credit for service in a covered industry in relation to work done before the industry became a covered industry.

#### **47A Service credit—unreported service**

- (1) This section applies in relation to an employee's service in a covered industry for work in the industry if—
  - (a) the employee is a registered worker in a covered industry; and
  - (b) the employee's employer has failed to give the authority a return (a *quarterly return*) under section 49; and
  - (c) the employee's employer ceases to trade in the ACT.
- (2) The registrar may credit the employee with 1 day of service in the workers register for the covered industry for each day of the employee's service in the covered industry, up to a maximum of 1 year, if the registrar is satisfied that—
  - (a) the employee was employed in the covered industry; and
  - (b) a quarterly return has not been given to the authority in relation to the employee's day of service.

##### **Example**

Belinda worked in the security industry for Moonlight Security Pty Ltd for 30 days in the quarter before the company ceased trading and went into liquidation without giving a return to the authority for the period Belinda worked. She then started work in the same covered industry for Bob the Bouncer for 45 days. Bob the Bouncer also failed to give a return in relation to Belinda's employment, but continues to operate in the industry. The registrar is satisfied that Belinda works as an employee in the security industry, and that quarterly returns have not been given to the authority in relation to Belinda's employment with either employer. The registrar may credit Belinda in the workers register for the security industry with 75 days (being less than 1 year) of service.



**48 Service credit—voluntary member’s prior service**

- (1) This section applies in relation to a voluntary member’s service in a covered industry for work done in the industry not earlier than 1 year before the voluntary member became a registered voluntary member for the industry.
- (2) The registrar may credit the voluntary member with 1 day of service in the workers register for the covered industry for each day worked—
  - (a) either—
    - (i) for which the voluntary member gives the board a record of the particulars mentioned in section 58 (1) (Registered voluntary members to keep records) for the voluntary member’s service; or
    - (ii) if the registrar is satisfied the voluntary member worked in the covered industry; and
  - (b) for which the voluntary member has paid the authority the levy determined under section 56 (Determination of levy—voluntary members).
- (3) To remove any doubt, a voluntary member is not entitled to credit for service in a covered industry in relation to work done before the industry became a covered industry.

## Part 5 Quarterly returns and payments

### 49 Quarterly returns by employers

- (1) A person who is an employer for a covered industry during a quarter must give the authority a return (a *quarterly return*) containing the required information for the quarter.

*Note* A late fee is payable if a quarterly return is not given to the authority within the later of 1 month after the end of the quarter and any additional time allowed by the registrar (see s 49A).

- (2) A person commits an offence if the person—
- (a) is required to give the authority a quarterly return for a quarter; and
  - (b) fails to give the quarterly return to the authority within the later of—
    - (i) 3 months after the end of the quarter; and
    - (ii) any additional time the registrar allows.

Maximum penalty: 20 penalty units.

- (3) This section does not apply in relation to an employee who carried out work for the employer for less than 5 days during the quarter.

*Note* The defendant has an evidential burden in relation to a matter mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) An offence against this section is a strict liability offence.
- (5) The registrar may allow additional time under subsection (2) (b) (ii) before or after the end of the 3-month period mentioned in subsection (2) (b) (i).

(6) In this section:

***required information***, for an employer for a quarter, means—

- (a) the name of each of the employer's employees who carried out work for the employer during the quarter; and
- (b) for each of the employer's employees—
  - (i) the total ordinary remuneration paid or payable by the employer to the employee for work done during the quarter; and
  - (ii) the number of days, or part days, during the quarter to which the remuneration relates; and
- (c) anything else prescribed by regulation.

#### **49A Late fee—quarterly return**

- (1) This section applies if an employer for a covered industry fails to give the authority a quarterly return mentioned in section 49 (1) within the later of—
  - (a) 1 month after the end of the quarter; and
  - (b) any additional time the registrar allows.
- (2) The employer is liable to pay to the authority a late fee of \$200 for each month or part of a month, up to a maximum of \$400, that the employer fails to give the authority the quarterly return after the later of the periods stated in subsection (1).
- (3) However, the registrar may waive all or part of a late fee if satisfied that the circumstances for the failure—
  - (a) were not caused by the employer; or
  - (b) make it unfair or unreasonable to charge the late fee.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## 50 Levy payments by employers

- (1) A person who is an employer for a covered industry during a quarter must, when the person gives the authority a return under section 49, pay the authority the levy payable under section 51 for the quarter.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## 51 Determination of levy—employers

- (1) Levy is payable by employers for a covered industry on the ordinary remuneration paid or payable by employers to employees.
- (2) The Minister may determine the levy payable by employers for a covered industry.

*Note 1* Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see [Legislation Act](#), s 48).

*Note 2* The governing board may determine minor changes to the levy payable (see s 56A).

- (3) The governing board must, from time to time, recommend in writing to the Minister the levy that should be payable by employers for a covered industry.
- (4) Before making a determination, the Minister must have regard to any recommendation made under subsection (3), but need not follow it.
- (5) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (6) For this section:

*employee* does not include an apprentice.

**52 Interest payable on levy payment**

- (1) This section applies if an employer for a covered industry fails to pay the authority the levy payable under section 50, in relation to a return for a quarter at the time the return is required to be given to the authority under section 49 (1).
  - (2) The employer is liable to pay to the authority interest on the amount of the levy unpaid, worked out daily from the end of the last day for payment until the day it is paid at the interest rate from time to time worked out under section 53.
  - (3) However, the registrar may waive all or part of the interest if satisfied that the circumstances for the failure—
    - (a) were not caused by the employer; or
    - (b) make it unfair or unreasonable to charge the premium rate component.
- Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).
- (4) If a court finds a person guilty of an offence under section 50, whether or not it convicts the person, the court may, whether or not it imposes a penalty on the person, order the person to pay the authority—
    - (a) the levy to which the prosecution relates; and
    - (b) the interest accrued on the amount of the levy unpaid.

**53 Interest rate**

- (1) The interest rate is the sum of—
  - (a) the discount rate component; and
  - (b) the premium rate component.
- (2) The Minister must, after consultation with the governing board, make guidelines for determining the interest rate components mentioned in subsection (1).

- (3) A guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) The governing board must—

- (a) in accordance with the guidelines, determine the interest rate; and  
(b) tell the Minister, in writing, about the determination.

- (5) A determination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## 54 Quarterly returns by voluntary members

- (1) A person who is a registered voluntary member for a covered industry during a quarter must give the authority a return containing the required information not later than—

- (a) 1 month after the end of the quarter; or  
(b) the end of any additional time the registrar allows.

*Note* If a form is approved under s 92 for a return, the form must be used.

- (2) The registrar may allow a registered voluntary member up to 2 months additional time to give the authority a return under subsection (1) before or after the end of the 1-month period mentioned in subsection (1) (a).

- (3) A person is taken not to be registered as a voluntary member for a covered industry 3 months after the day of the end of a quarter if the person fails to give the authority a return within 3 months after the end of the quarter.

(4) In this section:

***required information***, for a registered voluntary member for a covered industry, means—

- (a) the number of days, or part days, during the quarter on which the voluntary member carried out work in the covered industry; and
- (b) the voluntary member's total ordinary remuneration for the work during the quarter; and
- (c) anything else prescribed by regulation.

## **55 Levy payments by voluntary members**

A person who is a registered voluntary member for a covered industry during a quarter must, when the person gives the authority a return under section 54, pay to the authority the levy payable under section 56 for the quarter.

## **56 Determination of levy—voluntary members**

(1) The Minister may determine the levy payable by registered voluntary members for a covered industry.

*Note 1* The [Legislation Act](#), s 48 provides that a power to make a statutory instrument includes the power to make an instrument about 1 or more of the matters and to make different provisions with respect to different matters.

*Note 2* The governing board may determine minor changes to the levy payable (see s 56A).

- (2) The governing board must, from time to time, recommend in writing to the Minister the levy that should be payable by registered voluntary members for a covered industry.
- (3) Before making a determination, the Minister must have regard to any recommendation made under subsection (2), but need not follow it.

- (4) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**56A Minor changes to levy—employers and voluntary members**

- (1) Despite section 51 (2) (Determination of levy—employers) and section 56 (1) (Determination of levy—voluntary members), the governing board may determine the levy payable for a covered industry if—
- (a) the board would, under section 51 (3) or section 56 (2), recommend a change to the current levy; and
  - (b) the change, together with any other changes made to the levy in the 12 months before the determination is made, is less than or equal to a variation of 40 basis points.
- (2) If the governing board determines the levy—
- (a) if the levy is payable by employers—the determination repeals a determination made by the Minister under section 51 (2); and
  - (b) if the levy is payable by registered voluntary members—the determination repeals a determination made by the Minister under section 56 (1); and
  - (c) the governing board must tell the Minister, in writing, about the determination.
- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) Nothing in this section prevents the governing board from making a recommendation under section 51 (3) or section 56 (2).



**57 Employers to keep records**

- (1) An employer for a covered industry must keep a written record showing the relevant particulars for each employee who carries out work for the person.

Maximum penalty: 20 penalty units.

- (2) An employer must keep the written record for 7 years after the day the employee stops being employed by the employer.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) In this section:

*relevant particulars*, for an employee of an employer, means—

- (a) the employee's name and date of birth; and
- (b) the nature of the work carried out by the employee; and
- (c) the employee's ordinary remuneration for each quarter; and
- (d) the number of days worked by the employee in each quarter; and
- (e) the date when the employee began service with the employer; and
- (f) long service leave granted, or payment made instead of leave, to the employee; and
- (g) if the employee stops service with the employer—the date the employee stops service.

**58 Registered voluntary members to keep records**

- (1) A registered voluntary member for a covered industry must keep a written record of the following:

- (a) the voluntary member's name and date of birth;
- (b) the nature of the work carried out by the voluntary member;

- (c) when and for whom work is carried out;
- (d) the voluntary member's ordinary remuneration for each quarter;
- (e) the number of days worked by the voluntary member in each quarter.

Maximum penalty: 20 penalty units.

- (2) A registered voluntary member must keep the written record for 6 years after the day the record is made.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

## Part 5A                      Liability of company directors to pay levy

### 58A            Application—pt 5A

This part applies if—

- (a) a company (the *defunct company*)—
  - (i) is an employer in a covered industry; and
  - (ii) fails to pay the authority a levy payable by the company under section 50 for a quarter; and
  - (iii) disposes of property (a *creditor-defeating disposition*) in a way that has the effect of—
    - (A) preventing the property becoming available for the benefit of the company’s creditors in the winding-up of the company; or
    - (B) hindering, or significantly delaying, the process of making the property available for the benefit of the company’s creditors in the winding-up of the company; and
  - (iv) ceases to trade; and
- (b) another company (the *phoenix company*) is incorporated that—
  - (i) is an employer in the covered industry; and
  - (ii) conducts substantially the same business as the business conducted by the defunct company; and
- (c) at least 1 of the directors of the phoenix company was a director of the defunct company at the time the creditor-defeating disposition happened.

## 58B Liability of directors to pay levy

- (1) This section applies if—
  - (a) a person—
    - (i) is a director of a phoenix company; and
    - (ii) was a director of a defunct company at the time the company made a creditor-defeating disposition; and
  - (b) the levy payable by the defunct company under section 50 remains unpaid.
- (2) The authority may recover as a debt from the person—
  - (a) the amount of the levy that remains unpaid; and
  - (b) any interest payable under section 52 on the amount of the levy unpaid; and
  - (c) any costs reasonably incurred by the authority in recovering the unpaid levy.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- (3) If 2 or more people are together and separately liable to pay an amount under subsection (2), the authority may recover the whole of the amount from them, or any of them, or any 1 of them.
- (4) In this section:

*creditor-defeating disposition*—see section 58A (a) (iii).

*defunct company*—see section 58A (a).

*phoenix company*—see section 58A (b).

## Part 6 Entries in workers register

### 59 Particulars to be entered in workers register

The registrar must enter the following particulars in the workers register for a covered industry for each registered worker in the industry:

- (a) if the worker is serving a period of apprenticeship—the date when the apprenticeship began;
- (b) if the worker is an employee—each employer for whom the employee works;
- (c) the number of days of service with which the worker is credited under this Act;
- (d) the total ordinary remuneration of the worker for work carried out by the worker;
- (e) the worker's entitlement to long service leave;
- (f) details of the long service leave granted to, or taken by, the worker, or payment instead of long service leave made to the worker, under this Act or the *Long Service Leave Act 1976*;
- (g) if the worker has stopped working in the covered industry—the date when the worker stopped working in the industry;
- (h) any other relevant particulars the governing board reasonably directs.

### 60 Review of ordinary remuneration by governing board

- (1) This section applies if the governing board considers that the total ordinary remuneration for a worker stated in a return given to the authority under section 49 (Quarterly returns by employers) or section 54 (Quarterly returns by voluntary members) for a quarter is insufficient or excessive because of the nature of the work carried out by the worker in the quarter.

- (2) The governing board must give the following people a notice that summarises the person's rights under subsection (3):
  - (a) for a return under section 49—the employer who submitted the return and the employee;
  - (b) for a return under section 54—the voluntary member.
- (3) Not later than 1 month after being given the notice, a person mentioned in subsection (2) may ask the board to take into account anything set out in writing about the matter.
- (4) After considering any representations under subsection (3), the governing board may—
  - (a) agree that the total ordinary remuneration stated in the return for the quarter is reasonable; or
  - (b) fix another amount as the total ordinary remuneration of the worker for the quarter.

**61 Notice of governing board decisions on review of ordinary remuneration**

- (1) The governing board must, not later than 14 days after it makes a decision under section 60 (4), give written notice of the decision to—
  - (a) if the decision relates to a return under section 49 (Quarterly returns by employers)—the employer who gave the return and the employee; or
  - (b) if the decision relates to a return under section 54 (Quarterly returns by voluntary members)—the voluntary member.
- (2) If the decision is to fix another amount under section 60 (4) (b), the notice must include—
  - (a) the total ordinary remuneration fixed by the governing board for the quarter; and

- (b) a statement about the effect of section 62 and section 63 (Variation of ordinary remuneration—payment of additional amounts).

*Note* The governing board's decision to fix another amount under s 60 (4) (b) is a reviewable decision (see s 80, def *reviewable decision*), and the board must give a reviewable decision notice to the worker and, if the worker is an employee, the worker's employer (see s 81).

## 62 Effect of variation of ordinary remuneration

- (1) This section applies if the governing board fixes an amount (the *varied amount*) under section 60 (4) (b) in relation to a worker.
- (2) The varied amount is taken, for this Act, to be the worker's total ordinary remuneration for work by the worker for the quarter.
- (3) The following provisions apply if the varied amount relates to a return under section 49 (Quarterly returns by employers) by an employer of a registered employee:
  - (a) if the varied amount is more than the amount (the *returned amount*) shown in the return as the total ordinary remuneration of the employee, the employer must pay the authority the additional amount payable under section 51 (Determination of levy—employers) for the employee for the quarter;
  - (b) if the varied amount is less than the returned amount, the authority must—
    - (i) if asked by the employer to refund the overpayment of the levy payable under section 51—refund the overpayment; or
    - (ii) in any other case—credit the overpayment against future amounts payable under section 51 by the employer.

- (4) The following provisions apply if the varied amount relates to a return under section 54 (Quarterly returns by voluntary members) by a registered voluntary member:
- (a) if the varied amount is more than the amount (the *returned amount*) shown in the return as the total ordinary remuneration of the voluntary member, the voluntary member must pay the authority the additional amount payable under section 56 (Determination of levy—voluntary members) for the voluntary member for the quarter;
  - (b) if the varied amount is less than the returned amount, the authority must—
    - (i) if asked by the voluntary member to refund the overpayment of the levy payable under section 56—refund the overpayment; or
    - (ii) in any other case—credit the amount against future amounts payable under section 56 by the voluntary member.

**63 Variation of ordinary remuneration—payment of additional amounts**

- (1) This section applies if—
- (a) the governing board decides to fix an amount as the total ordinary remuneration of a worker under section 60 (4) (b); and
  - (b) because the governing board has fixed the amount a person must pay an amount under section 62 (3) (a) or (4) (a).
- (2) The person must pay the amount not later than—
- (a) 1 month after the day the person receives notice under section 61 of the governing board’s decision; or
  - (b) the end of any additional time the registrar allows.

Maximum penalty: 20 penalty units.



- (3) An offence against this section is a strict liability offence.
- (4) The registrar may allow a person additional time to pay the amount under subsection (2) before or after the end of the 1-month period mentioned in subsection (2) (a).

**64 Service credit—registered worker’s service**

Service to be credited in the workers register for a registered worker for a covered industry is the amount of service worked out under the covered industry schedule for the covered industry.

**65 Removing people from workers register**

- (1) The registrar must remove a person from the workers register if the person has not been credited under this Act or a corresponding law with at least 1 day of service for 4 consecutive years.
- (2) If the person is removed under subsection (1)—
  - (a) the person stops being a registered worker on the day the person is removed; and
  - (b) the person is not entitled to apply for, or to be paid an amount for or instead of, long service leave for any days of service entered in the register before the day the person stopped being a registered worker.
- (3) However, subsection (2) (b) does not apply if the person would, but for the person ceasing to be registered, have been entitled to payment for the period under—
  - (a) schedule 1, section 1.8 (Entitlement to payment instead of leave—building and construction industry); or
  - (b) schedule 2, section 2.8 (Entitlement to payment instead of leave—contract cleaning industry); or
  - (c) schedule 3, section 3.9 (Entitlement to payment instead of leave—community sector industry); or

- (d) schedule 4, section 4.9 (Entitlement to payment instead of leave—security industry).
- (4) The registrar must not remove a person from the workers register if the person stops carrying out work to which this Act applies and tells the authority that the person is otherwise employed or engaged in other work until whichever of the following first occurs:
  - (a) the person applies to the authority for payment of the total amount for or instead of long service leave;
  - (b) the person's employer makes an application under section 89 (Benefits under other laws—reimbursement of employer) for payment of the total amount to which the employer is entitled;
  - (c) if the person is a voluntary member—the person asks the authority to remove the person from the register;
  - (d) the period of 10 years, starting on the day when the person stops carrying out work to which this Act applies, ends.
- (5) A request under subsection (4) (c) must state—
  - (a) the date when the person became otherwise employed or engaged in work to which this Act applies; and
  - (b) the name and address of the principal place of business of the person's employer (if any).

**66 Re-registration in workers register**

- (1) The governing board must direct the registrar to re-register a person in the workers register if—
  - (a) the person has been removed from the register under section 65; and
  - (b) the governing board is satisfied that the person has been credited with a period of service under a corresponding law within the period of 4 years ending on the day when the person was removed from the register.
- (2) If a person is re-registered under subsection (1), this Act applies in relation to the person as if the person had not been removed from the register.
- (3) This section does not affect any right that a person who has been removed from the workers register may have to again become a registered worker.

## Part 7 Access to long service leave register information

### 67 Information for registered workers

The registrar must provide each registered worker access to the following information kept on the workers register:

- (a) the number of days of service from the worker's registration day to the end of the previous financial year that the worker has been credited with in the workers register;
- (b) the number of days of service the worker has been credited with in the financial year in which the information is being accessed;
- (c) the total ordinary remuneration paid to the worker during the previous financial year by a registered employer;
- (d) if the worker is a voluntary member—the total amount paid by the contract under section 56 (Determination of levy—voluntary members) for the previous financial year.

### 68 Information for employers

The registrar must provide each registered employer access to the following information kept on the employers register:

- (a) the name of each registered worker for the employer recorded in the workers register;
- (b) for each registered worker for the employer—
  - (i) the number of days of service, from the registration day to the end of the previous 12 months that the worker has been credited with in the workers register; and
  - (ii) the number of days of service that the worker has been credited with for the previous financial year;

- (c) the total amount paid by the employer under section 51 (Determination of levy—employers) for the previous financial year.

**Example**

access or download information from a website

**69 Certified copies of long service leave registers**

- (1) On application by an employer, a registered worker or a person acting on behalf of the employer or worker, the registrar must give the applicant a certified copy of any part of the register that relates to the employer or worker.

*Note* A fee may be determined under s 91 for this provision.

- (2) A person who is given a certified copy under this section may object to the registrar about the accuracy of a matter stated in the copy.
- (3) An objection must be made in writing within 6 months after the day the certified copy is given to the person objecting.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (4) If an objection is made, the governing board must decide the objection and if allowing the objection, give an amended certified copy to the person who objected.

*Note* The registrar may correct a mistake, error or omission in the workers register—see s 30 and s 39.

## Part 8 Enforcement

### 70 Definitions—pt 8

In this part:

*at* premises includes in or on the premises.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

### 71 Appointment of inspectors

The registrar may appoint a public servant as an inspector for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

### 72 Identity cards

- (1) The registrar must give an inspector an identity card stating the officer's name and that the officer is an inspector.
- (2) The identity card must show—
  - (a) a recent photograph of the inspector; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.

- (3) A person commits an offence if—
- (a) the person stops being an inspector; and
  - (b) the person does not return the person's identity card to the registrar as soon as practicable (but not later than 7 days) after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

- (4) Subsection (3) does not apply to a person if the person's identity card has been—
- (a) lost or stolen; or
  - (b) destroyed by someone other than the person.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) An offence against this section is a strict liability offence.

### **73 Power to enter premises**

- (1) For this Act, an inspector may—
- (a) at any reasonable time, enter premises that the inspector believes on reasonable grounds is a workplace; or
  - (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or
  - (c) at any time, enter premises with the occupier's consent.

*Note* **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) However, subsection (1) (a) or (b) does not authorise entry into a part of premises that is being used only for residential purposes.

- (3) An inspector may, without the consent of the occupier of premises, enter land that is around, or part of, the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) For subsection (1) (a) and (b), the inspector may enter the premises with any necessary assistance and force.
- (6) However, only a police officer may use force against a person.

**74 Production of identity card**

An inspector must not remain at premises entered under this part if the inspector does not produce the inspector's identity card when asked by the occupier.

**75 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter the premises under section 73 (1) (c) (Power to enter premises), an inspector must—
  - (a) produce the inspector's identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found under this part may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and



- (ii) that anything found under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that an occupier did not consent to entry to premises by the inspector under this part if—
- (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

## **76 Power to obtain, inspect and copy records**

- (1) An inspector may, in writing, require any of the following to give the inspector information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the inspector for this Act:
- (a) an employer for a covered industry;
  - (b) a voluntary member for a covered industry;
  - (c) a bank or other financial institution that holds accounts for an employer, or voluntary member, for a covered industry;
  - (d) an accountant or bookkeeper engaged by an employer, or voluntary member, for a covered industry.

### **Example**

request and obtain by email a list of employees

- (2) An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) examine anything;
  - (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;
  - (c) take photographs, films, or audio, video or other recordings;
  - (d) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably necessary to exercise a function under this Act;
  - (e) require the occupier, or anyone else at the premises, to give the inspector copies of documents produced under paragraph (d) that are reasonably necessary to exercise a function under this Act;
  - (f) require the occupier, or anyone else at the premises, to give the inspector reasonable help to exercise a power under this part.

**Example—par (d)**

An inspector is conducting an inspection at a construction site. The inspector forms the view that relevant documents are held at the head office of the company operating the construction site. A person at the premises may be required to produce the documents that are held at the head office.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see [Legislation Act](#), s 104).

- (3) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) or subsection (2) (d), (e) or (f).

Maximum penalty: 50 penalty units.

**76A Abrogation of privilege against self-incrimination**

- (1) A person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
- (2) However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

**76B Warning to be given**

- (1) Before requiring a person to answer a question or provide information or a document under this part, an inspector must—
  - (a) warn the person that failure to take reasonable steps to comply with a requirement mentioned in section 76 (2) would constitute an offence; and
  - (b) warn the person about the effect of section 76A.
- (2) It is not an offence for an individual to refuse to answer a question put by an inspector or provide information or a document to an inspector under this part on the ground that the question, information or document might tend to incriminate the individual, unless the individual was first given the warning in subsection (1) (b).
- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person.

**77 Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take reasonable steps to ensure that the inspector, and anyone assisting the inspector, causes as little inconvenience, detriment and damage as practicable.
- (2) If an inspector, or anyone assisting an inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person the inspector believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

**78 Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector or anyone assisting an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## 79 Enforcement of obligations

- (1) The registrar may apply to the ACAT for an order to enforce an obligation imposed under this Act.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

*Note 2* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

- (2) The ACAT may make any order it considers appropriate in relation to—
- (a) the registration of an employer or worker; or
  - (b) the keeping of, and access to, records relating to a worker; or
  - (c) the recovery of any payment required to be made by an employer; or
  - (d) any other matter for the purpose of enforcing an obligation under this Act.

## Part 8A Administration

### Division 8A.1 The authority, governing board and staff

*Note* The governance of territory authorities, including the Long Service Leave Authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The *FMA*, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

#### 79A Establishment of authority

The Long Service Leave Authority (the *authority*) is established.

#### 79B Authority not territory instrumentality etc

The authority is not a territory instrumentality and does not represent the Territory.

#### 79C Functions of authority

- (1) The authority has the following functions:
- (a) administering the long service leave benefits schemes established under this Act;
  - (b) making payments under this Act;
  - (c) keeping the employers registers and workers registers for covered industries;
  - (d) any other function given to the authority under this Act or another territory Law.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act*, s 196 and dict, pt 1, def *entity*).

- (2) To remove any doubt, the authority may exercise its functions inside and outside the ACT, including in a foreign country.

### **79D Delegation by authority**

The authority may delegate the authority's functions to the registrar or a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

### **79E Establishment of governing board**

The authority has a governing board.

*Note* An appointment of a governing board member is an appointment under this section (see [Financial Management Act 1996](#), s 78 (7) (b)).

### **79F Governing board members**

- (1) The governing board has at least 3 members and not more than 7 members.

*Note 1* The chair of the governing board must be appointed under the [Financial Management Act 1996](#), s 79.

*Note 2* The chief executive officer of the authority is appointed by the governing board after consulting with the responsible minister (see [Financial Management Act 1996](#), s 80 (2)).

*Note 3* The registrar is a member of the governing board and is the chief executive officer of the authority (see dict, def *registrar* and [Financial Management Act 1996](#), s 80 (4)).

- (2) The governing board must have the following members:
- (a) at least 1 member appointed to represent employer organisations for the covered industries;
  - (b) at least 1 member appointed to represent employee organisations for the covered industries;

(c) at least 1 other member who is not appointed to represent an employer or employee organisation.

*Note* One of the members mentioned in par (c) is the deputy chair (see s 79G).

- (3) In appointing the members for subsection (2) (a) and (b), the Minister must, as far as practicable, ensure that there is equal representation for employer organisations and employee organisations.
- (4) The chair of the governing board must not be a member mentioned in subsection (2) (a) or (b).
- (5) A member of the governing board must not be appointed for a term longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (6) The Minister may, under the [Legislation Act](#), section 209, appoint a person to act as a member.
- (7) The registrar is a non-voting member of the governing board.

*Note* The [Financial Management Act 1996](#), s 95 (2) and s 96 (1) deal with non-voting members of governing boards.

## **79G Deputy chair**

The Minister must appoint a member of the governing board mentioned in section 79F (2) (c) as the deputy chair.

*Note* A deputy chair is appointed under the [Financial Management Act 1996](#), s 79.



## 79H Deputy registrar

- (1) The director-general must appoint a public servant to be deputy registrar for the authority.

*Note 1* The registrar is the chief executive officer of the authority (see dict, def **registrar** and *Financial Management Act 1996*, s 80 (4)).

*Note 2* For the making of appointments (including acting appointments), see the *Legislation Act*, pt 19.3.

*Note 3* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see *Legislation Act*, s 207).

- (2) If the registrar is absent or cannot for any reason exercise the functions of the registrar, the deputy registrar must act as registrar.

*Note* The *Legislation Act*, div 19.3.2A deals with standing acting arrangements.

## 79I Functions of governing board

The governing board has the following functions:

- (a) making recommendations to the Minister under section 51 (Determination of levy—employers) and section 56 (Determination of levy—voluntary members);
- (b) determining a levy for a covered industry under section 56A (Minor changes to levy—employers and voluntary members); and
- (c) recommending to the Minister laws to be declared to be corresponding laws under section 87 (Declaration of corresponding laws);
- (d) any other function given to the governing board under this Act or another territory law.

*Note* The governing board also has functions under the *Financial Management Act 1996*.

### **79J Arrangements for staff**

The authority may arrange with the head of service to use the services of a public servant.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

## **Division 8A.2 Finances**

### **79K Money of authority**

The money of the authority includes—

- (a) amounts received by the authority under section 51 (Determination of levy—employers) and section 56 (Determination of levy—voluntary members); and
- (b) income derived from the investment of money of the authority; and
- (c) amounts borrowed for, and lent to, the authority by the Treasurer under the *Financial Management Act 1996*, section 59 (Borrowing by territory authorities); and
- (d) any other amounts paid to the authority.

### **79L Application of authority money**

The money of the authority must be applied only in payment of—

- (a) the costs, expenses or other obligations of the authority under this Act; or
- (b) remuneration and allowances payable to anyone appointed or employed under this Act; or
- (c) the costs in relation to the administration of the authority.

**79M      Authority money—separate funds for covered industries**

- (1) The authority must establish and keep a separate fund for money of the authority in relation to each covered industry.
- (2) The money of the authority must be kept and applied in a way that enables the money of the authority that relates to each covered industry to be separately identified.
- (3) However the authority may establish a common fund—
  - (a) to pay the costs, expenses or other obligations of the authority that relate to more than 1 covered industry; or
  - (b) to invest the money of the authority in an investment for more than 1 covered industry.

**79N      3-yearly investigation by actuary**

- (1) The governing board must appoint an actuary for this Act.
  - Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.
  - Note 2* For example, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).
  - Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).
- (2) The actuary must conduct an investigation of the state and adequacy of the money of the authority—
  - (a) if asked by the governing board; and
  - (b) at least once every 3 years.

- (3) The actuary must report the results of the investigation to the governing board and state whether, in the actuary's opinion, any reduction or increase is necessary in the rates of levies payable to the authority by employers or voluntary members under this Act.
- (4) The actuary must give the Minister a copy of each report under this section.

## Part 9 Notification and review of decisions

### 80 Definitions—pt 9

In this part:

*decision-maker*, for a reviewable decision, means a decision-maker mentioned in schedule 5, column 5 for the decision.

*internally reviewable decision*—see section 80A (1).

*reviewable decision* means a decision mentioned in schedule 5, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 80A Internal review of certain decisions

- (1) This section applies to a reviewable decision made by the registrar (an *internally reviewable decision*).
- (2) An entity mentioned in schedule 5, column 4 for an internally reviewable decision may apply in writing to the governing board for internal review of the decision.
- (3) The governing board must review the decision.

### 80B Applications for internal review

- (1) An application for internal review of an internally reviewable decision must be made within—
  - (a) 28 days after the day when the applicant is told about the decision by the registrar; or
  - (b) any longer period allowed by the governing board, whether before or after the end of the 28-day period.
- (2) The application must set out the grounds on which internal review of the decision is sought.

- (3) The making of the application for internal review of the decision does not affect the operation of the decision.

### **80C Internal review**

- (1) The governing board must review an internally reviewable decision, and confirm, vary or revoke the decision, within 28 days after the governing board receives the application for internal review of the decision.
- (2) As soon as practicable after reviewing the decision, the governing board must give written notice of the decision on the internal review to the applicant.

### **81 Reviewable decision notices**

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice only to—

- (a) each entity mentioned in schedule 5, column 4 in relation to the decision; and
- (b) any other person prescribed by regulation.

*Note* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### **82 Review of decisions by ACAT**

- (1) The ACAT may review a reviewable decision made by the governing board if—
  - (a) the governing board is the decision maker mentioned in schedule 5, column 5 for the decision; or
  - (b) the decision was made under section 80C following the review of an internally reviewable decision.

- (2) The following people may apply to the ACAT for review of a decision made by the governing board:
- (a) an entity mentioned in schedule 5, column 4 for the decision;
  - (b) a person prescribed by regulation.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 10 Miscellaneous

### 83 Evidentiary certificates

- (1) In a proceeding for an offence against section 49 (Quarterly returns by employers) or section 54 (Quarterly returns by voluntary members), a certificate signed by or on behalf of the registrar to the effect of any of the following is evidence of the matters stated in the certificate:
  - (a) that the registrar had, or had not, allowed a stated person an additional stated period to give to the authority a return under a stated section for a stated quarter;
  - (b) that a stated person had, or had not, given to the authority a return under a stated section for a stated quarter on or before a stated date.
- (2) In a proceeding for an offence against section 50 (Levy payments by employers) or section 55 (Levy payments by voluntary members), a certificate signed by or on behalf of the registrar to the effect of any of the following is evidence of the matters stated in the certificate:
  - (a) that a stated amount of levy under a stated section was, or was not, payable by a stated person for a stated quarter;
  - (b) that, on or before a stated date, a stated person had, or had not, paid to the authority, under a stated section, a stated amount of levy that was payable by the person for a stated quarter.

### 84 Disclosure of information to territory entities and reciprocal authorities

- (1) The authority may disclose information—
  - (a) in relation to an employer's compliance with this Act—to a territory entity for the purpose of the exercise by the entity of a function for a territory law; and



- (b) in relation to a registered worker's credit for service and long service benefits to a reciprocal authority—for the purpose of the exercise of a function by—
  - (i) the authority under this Act; or
  - (ii) the reciprocal authority under a corresponding law.
- (2) In this section:

*territory entity* means—

- (a) the director-general of an administrative unit; or
- (b) the chief executive officer of a territory authority.

*Note* *Administrative unit* and *territory authority* are defined in the [Legislation Act](#), dictionary, pt 1.

## **86 No contracting out**

- (1) This Act has effect in relation to a registered worker despite anything to the contrary in a term of the worker's contract.
- (2) A provision of a registered worker's contract is void to the extent that it—
  - (a) is inconsistent with this Act; and
  - (b) has the effect of excluding, restricting or reducing the rights given to the worker under this Act.
- (3) However, the registered worker's contract applies to the extent that it gives the worker rights that are more beneficial than the rights given to the worker under this Act.

**88 Benefits under other laws—election**

- (1) This section applies if a registered worker—
  - (a) has accrued long service benefits under this Act; and
  - (b) is eligible for long service benefits under one or more of the following laws:
    - (i) the *Long Service Leave Act 1976*;
    - (ii) a corresponding law;
    - (iii) a law prescribed by regulation for employment in a covered industry; and
  - (c) elects to take the long service benefits under a law other than this Act.
- (2) The registered worker must nominate in writing—
  - (a) the law under which the registered worker elects to take the long service benefits; and
  - (b) if the worker is a worker for the building and construction industry—the number of days of credit for service for which the election is made; and
  - (c) if the worker is not a worker for the building and construction industry—the service period, or part of the service period, for which the election is made.
- (3) If the authority receives a written nomination, the authority must—
  - (a) remove from the relevant workers register credit for service equal to—
    - (i) if the worker nominated days of credit for service—the number of days of credit for service nominated; or
    - (ii) if the worker nominated a service period—the service period, or part of the service period, nominated; and

- (b) keep a record of the credit for service removed from the relevant workers register.

## **89 Benefits under other laws—reimbursement of employer**

- (1) This section applies if—
  - (a) a registered worker has made an election under section 88; and
  - (b) an employer for a covered industry pays the registered worker an amount under a relevant provision.
- (2) The employer may apply to the authority for reimbursement of an amount paid under the relevant provision, less any amount outstanding that is payable by the employer to the authority, if—
  - (a) an application is made to the authority; and
  - (b) the registrar is satisfied that the amount paid by the employer was properly paid under the relevant provision.
- (3) In this section:
  - relevant provision* means—
    - (a) the *Long Service Leave Act 1976*, section 8 (Manner of payment for leave); or
    - (b) a law prescribed by regulation.

## **89A Authority reimbursement of certain payments**

- (1) An employer of a registered worker may apply to the registrar for reimbursement of a payment made directly to an employee.

*Note* If a form is approved under s 92 for this provision, the form must be used.
- (2) If the registrar is satisfied that the employer has paid a long service leave entitlement to the employee under a corresponding law, the registrar may reimburse the lesser of—
  - (a) the amount the employer paid to the employee; and

- (b) the amount the authority would have paid the employee.

## 90 Reciprocal agreements for corresponding laws

- (1) The Minister may enter into an agreement (a *reciprocal agreement*) with the Minister of State who administers a corresponding law in relation to payments of long service leave to people carrying out work in a covered industry in the State.

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (2) Without limiting subsection (1), the agreement may make provision in relation to—
  - (a) payments for, or instead of, long service leave; and
  - (b) the exchange of information about credit for service and entitlements to long service benefits between the authority and the reciprocal authority under the corresponding law; and
  - (c) anything else in relation to long service benefits that the Minister considers appropriate.

## 91 Determination of fees

- (1) The Minister may determine fees for this Act.

*Note* The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## 92 Approved forms

- (1) The registrar may 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.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### **93 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](#).

### **97A Transitional—entitlement to payment instead of leave**

- (1) This section applies to a person who is a registered worker in a covered industry immediately before the commencement of this section.
- (2) The following sections, as in force immediately before the commencement of this section, continue to apply in relation to the person:
- (a) for a registered worker in the building and construction industry—schedule 1, section 1.8;
  - (b) for a registered worker in the contract cleaning industry—schedule 2, section 2.8;
  - (c) for a registered worker in the community sector industry—schedule 3, section 3.9.

## Schedule 1      Long service leave payments— building and construction industry

(see s 6)

### 1.1      What is the *building and construction industry*?

- (1) The *building and construction industry* is—
- (a) in relation to the ACT—the industry of constructing, reconstructing, renovating, repairing, altering, demolishing or maintaining the following:
    - (i) buildings, fences or swimming pools;
    - (ii) roadworks, light rail and other railways, airfields or other works for the carriage of people, animals or vehicles;
    - (iii) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of a harbour, river or watercourse for the purpose of navigation;
    - (iv) works for the storage or supply of water or the irrigation of land;
    - (v) works for the carriage, treatment or disposal of sewage or the effluent from any premises;
    - (vi) bridges, viaducts, aqueducts, tunnels or pipelines;
    - (vii) chimneystacks, cooling towers, drilling rigs, gas holders or silos;
    - (viii) structures, fixtures or works for use in any building or works mentioned in subparagraphs (i) to (vii);

- (ix) navigational lights, beacons or markers;
  - (x) works for the drainage of land;
  - (xi) works for the storage of liquids (other than water) or gases;
  - (xii) works for the transmission of electric power or wireless or telegraphic communications; and
- (b) in relation to a reciprocating State—the building and construction industry within the meaning of the corresponding law of the State.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (2) Also, the ***building and construction industry***, in relation to the ACT, includes the following undertaken in relation to an activity mentioned in subsection (1) (a):
- (a) pile driving and site preparation;
  - (b) installing data cabling or security or electronic communication systems;
  - (c) laying floor coverings;
  - (d) hard landscaping;
  - (e) building or construction work undertaken as part of training with a registered training organisation under the [National Vocational Education and Training Regulator Act 2011](#) (Cwlth), section 3.
- (3) In this section:
- light rail***—see the [Road Transport \(General\) Act 1999](#), dictionary.

## 1.2 What is *building and construction work*?

- (1) In this Act:

*building and construction work* means—

- (a) work in the building and construction industry; or
- (b) direct supervision of a worker carrying out work in the building and construction industry.

*Note* The Minister may declare work or an activity to be building and construction work (see s 12 (2) (d)) or to not be building and construction work (see s 13 (2) (d)).

- (2) In this section:

*direct supervision*, of a person, means the oversight by the supervising person of the work of the person by—

- (a) directing, demonstrating, monitoring and checking the person's work in a way that is appropriate to the person's level of competency; and
- (b) ensuring the person's capacity to respond in an emergency situation.

## 1.3 *Recognised service*—building and construction industry

- (1) In this schedule:

*recognised service*, for a registered worker in the building and construction industry, means the total number of days of service credit for all of the service periods of the worker less any days of service credit that the worker—

- (a) has been granted long service leave for; or
- (b) has received a payment for instead of long service leave.

- (2) A registered worker for the building and construction industry is taken to have completed a year of recognised service for each 220 days of recognised service.



**1.4 Service credit—building and construction industry—s 64**

- (1) A registered worker for the building and construction industry is to be credited in the workers register with 1 day of service for each day that the worker carries out building and construction work in each service period on or after the worker's registration day.

*Note* Prior service is also credited in the workers register in accordance with, for employees, s 47, and for voluntary members, s 48.

- (2) However, the registrar must not enter more than 220 days of service in the workers register for the worker for the financial year.

**1.4A Service period—building and construction industry**

- (1) A *service period* for a person who is a registered worker for the building and construction industry is a continuous period—
- (a) beginning on the day when the person becomes a worker for the industry; and
  - (b) ending on the day when the person stops being a worker for the industry.
- (2) For subsection (1), a person stops being an employee for an employer for the industry at the end of a quarter if—
- (a) if the employee was an employee of only 1 employer for the industry in the quarter—the employer's return under section 49 for the following quarter shows no ordinary remuneration for the employee; or
  - (b) if the employee was an employee of 2 or more employers for the industry in the quarter—none of the employers' returns under section 49 for the following quarter shows ordinary remuneration for the employee.

- (3) Despite subsection (1), a registered worker's service period is not taken to end if a person stops being a worker because—
- (a) of incapacity for an injury for which the worker is entitled to compensation under the *Workers Compensation Act 1951*; or
  - (b) if the worker is an employee—the employee has been dismissed by an employer to ensure that the employee does not take long service leave while in the employer's employment; or
  - (c) if the worker is a voluntary member—the voluntary member's engagement by the employer is ended to ensure that the voluntary member does not take long service leave while engaged by the employer.

### 1.5 Long service leave formula—building and construction industry

The *long service leave formula* for the building and construction industry is—

- (a) for service before 20 December 1996—

$$W = 0.8667 \times \frac{RS}{220}$$

- (b) for service on or after 20 December 1996—

$$W = 1.3 \times \frac{RS}{220}$$

**RS** means the registered worker's number of days recognised service.

**W** means the number of weeks long service leave held by the registered worker.

**1.6 Amount of leave—building and construction industry**

- (1) A registered worker for the building and construction industry who has 10 years or more recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the building and construction industry.
- (2) A registered worker for the building and construction industry who has 10 years or more recognised service is entitled to additional long service leave worked out in accordance with the long service leave formula for the building and construction industry if the worker—
  - (a) becomes entitled to long service leave under this Act for work done in the industry; and
  - (b) is credited in the workers register with an additional period of service in the industry commencing on the date on which the worker became entitled to the long service leave.
- (3) A registered worker for the building and construction industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—
  - (a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or
  - (b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.
- (4) A determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**1.7 Grant of leave by employers—building and construction industry**

- (1) The employer of a registered employee for the building and construction industry commits an offence if—
- (a) the employee’s long service leave accrues; and
  - (b) the employer does not grant the employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.
- (3) The employer of a registered employee for the building and construction industry commits an offence if—
- (a) the employer has granted the employee long service leave; and
  - (b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—
    - (i) not later than 2 months after the day when the long service leave starts; or
    - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

***prescribed period***, for long service leave accrued by a registered employee for the building and construction industry of an employer, means—

- (a) 6 months after the day the leave accrues; or

- (b) if the governing board has allowed, on application by the employer or the employee, a period longer than 6 months—the period allowed by the board; or
- (c) if the employer and employee agree on a period longer than 6 months—the period agreed.

### **1.8 Entitlement to payment instead of leave—building and construction industry**

- (1) This section applies to a registered worker for the building and construction industry who has at least 7 years recognised service if—
  - (a) the worker has permanently left the industry; and
  - (b) 20 weeks have passed since the day the worker permanently left the industry; and
  - (c) the worker has not been credited with service in the workers register for any of the days in the 20-week period.
- (2) However, subsection (1) (b) and (c) does not apply to a registered worker if—
  - (a) the worker has permanently left the building and construction industry; and
  - (b) the worker has not been credited with service in the workers register for any of the days after the worker permanently left the building and construction industry; and
  - (c) either—
    - (i) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or
    - (ii) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

- (3) Also, this section applies to a registered worker for the building and construction industry if the worker—
- (a) has left the industry during—
    - (i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or
    - (ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and
  - (b) satisfies the criteria determined by the Minister.
- (4) Also, this section applies to a registered worker for the building and construction industry if the worker has 5 years recognised service and any of the following apply to the worker:
- (a) the worker has left the industry because of total incapacity;
  - (b) the worker has reached the prescribed retiring age;
  - (c) the worker has died.
- (5) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—
- (a) if subsection (1) or (4) applies to the worker—the amount of long service leave credited to the worker in the workers register; or
  - (b) if subsection (3) applies to the worker—the amount of long service leave determined by the Minister.
- (6) A determination under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

(7) In this section:

*prescribed retiring age* means—

- (a) in relation to a registered worker who has been granted a service pension under the *Veterans' Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or
- (b) in any other case—55 years.

### **1.9 Payment for leave—building and construction industry**

- (1) A registered employee for the building and construction industry who has been granted long service leave under section 1.7, or a registered voluntary member for the industry who is entitled to long service leave, may apply to the authority for payment for the leave.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (2) The authority must pay to the applicant the amount payable under section 1.11 (How are leave payments worked out for the building and construction industry?) if the registrar is satisfied that—
  - (a) the applicant is entitled to long service leave under this Act for work done in the building and construction industry; and
  - (b) the applicant has been granted leave by the applicant's employer.
- (3) The authority must pay an applicant any amount payable under subsection (2) not later than 21 days after the worker's application has been made.

**1.10 Payment instead of leave—building and construction industry**

- (1) If a registered worker for the building and construction industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (2) An application by a registered employee for the building and construction industry on the ground that the employee has ceased work in the building and construction industry because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry.
- (3) The governing board may require an applicant mentioned in subsection (2) to submit himself or herself to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.
- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse, to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under section 1.11 (How are leave payments worked out for the building and construction industry?).



**1.11 How are leave payments worked out for the building and construction industry?**

- (1) For section 1.9 (Payment for leave—building and construction industry) and section 1.10 (Payment instead of leave—building and construction industry), the amount payable to a registered worker for, or instead of, long service leave is—
  - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 1.12; and
  - (b) for any part of the entitlement to long service leave accrued as a voluntary member—the amount worked out in accordance with section 1.13.
- (2) For subsection (1)—
  - (a) long service leave must be taken in the reverse order in which it accrued; and
  - (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

**Example**

John has 10 years of service in the building and construction industry, giving him an entitlement to 13 weeks long service leave. He first worked in the industry as a registered employee and accrued 7 weeks of the entitlement in that capacity. John then worked as a registered voluntary member and accrued 6 weeks of the entitlement in that capacity.

John decides to take 9 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under section 1.12 where ‘D’ is 1185 (ie it took 1185 days of service as a registered employee to accrue the first 7 weeks of his long service leave entitlement);

- the amount calculated under section 1.13 which is the total of the amounts paid to the authority under section 56 for his first 1.54 years work as a registered voluntary member (ie it took 338 days of service as a registered voluntary member to accrue the next 2 weeks of his long service leave entitlement) and the interest under section 1.13 on those amounts.

### 1.12 Leave payments for service as registered employee— building and construction industry

- (1) For section 1.11, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the building and construction industry is the amount worked out as follows:

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

- (2) In this section:

*D* means the number of days of service credited to the registered worker in the workers register for service as an employee and to which the payment relates.

*defined fraction* means—

- in relation to service that occurred before 20 December 1996—0.8667; and
- in relation to service that occurred on or after 20 December 1996—1.3.

*designated day* means—

- if the registered worker is taking long service leave—the day the leave begins; and
- if the registered worker is being paid instead of taking long service leave—the day the payment is made.

**R** is—

- (a) if the registered worker is receiving compensation under the *Workers Compensation Act 1951*—the weekly average of the ordinary remuneration received by the worker during the 4 quarters before the injury to which the compensation relates happened; or
- (b) in any other case—the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:
  - (i) the most recent 2 quarters of service as a registered employee before the designated day;
  - (ii) the most recent 4 quarters of service as a registered employee before the designated day.

**1.13 Leave payments for service as registered voluntary member—building and construction industry**

- (1) For section 1.11 (How are leave payments worked out for the building and construction industry?), the amount payable to a registered worker for the building and construction industry for long service leave for service accrued as a voluntary member is the total of the following for the service:
  - (a) amounts paid by the worker to the authority under section 56 (Determination of levy—voluntary members);
  - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.
- (2) The governing board must determine an interim rate of interest from time to time prior to the determination of the rate under subsection (1).

- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
  - (a) if the construction industry scheme funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
  - (b) if the fund did not make a return or made a loss—nil.
- (4) In this section:  
*designated day*—see section 1.12.

#### **1.14 Payment by authority on reciprocal authority's behalf—building and construction industry**

- (1) This section applies to a registered worker for the building and construction industry who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

#### **1.15 Payments by reciprocal authority on authority's behalf—building and construction industry**

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the building and construction industry.

- (2) If the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount worked out as follows:

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

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.
- (4) In subsection (2):

*D* means the number of days of service credited to the person in the workers register for service as an employee and to which the payment relates.

*defined fraction* means—

- (a) in relation to service that occurred before 20 December 1996—0.8667; and
- (b) in relation to service that occurred on or after 20 December 1996—1.3.

*R* is the amount decided by the reciprocal authority as the weekly amount payable to the person for the service credited to the person in the State.

### **1.17 Records of payments and service—building and construction industry**

- (1) This section applies if the authority—
- (a) pays an amount to a registered worker for the building and construction industry under section 1.9 (Payment for leave—building and construction industry) or section 1.10 (Payment instead of leave—building and construction industry); or

- (b) reimburses a reciprocal authority under section 1.15 (2) (Payments by reciprocal authority on authority's behalf—building and construction industry) for an amount paid to a registered worker for the industry.
- (2) The authority may delete from the workers register the details relating to the period of service for which the worker has been paid.
- (3) However, the authority must keep another record of—
  - (a) the period of service; and
  - (b) the amount paid to the worker for long service leave or instead of long service leave; and
  - (c) the period of long service leave (if any) granted to or taken by the worker.

**1.18 Public holidays not to count as leave—building and construction industry**

- (1) This section applies if a public holiday falls during a period of long service leave taken by a registered employee for the building and construction industry.
- (2) The period of long service leave is increased by 1 day for each public holiday.

## Schedule 2 Long service leave payments— contract cleaning industry

(see s 6)

### 2.1 What is the *contract cleaning industry*?

The *contract cleaning industry* is—

- (a) in relation to the ACT—the industry in which employers provide cleaning work to other people through the provision of workers' services; and
- (b) in relation to a reciprocating State—the contract cleaning industry within the meaning of the corresponding law of the State.

*Note* State includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

### 2.2 What is *cleaning work*?

- (1) In this Act:

*cleaning work* means—

- (a) work that has, as its only or main component, bringing premises into, or maintaining premises in, a clean condition; or
- (b) the collection or sorting of waste at, or for, an identified waste management facility if the employer providing the work through the provision of services does so under a contract with the Territory.

*Note* The Minister may declare work or an activity to be cleaning work (see s 12 (2) (d)) or to not be cleaning work (see s 13 (2) (d)).

- (2) The Minister may determine that a facility is an identified waste management facility for subsection (1) (b).
- (3) A determination is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

*Note 2* The definition of *cleaning work* was broadened to include the collection and sorting of waste with effect from 1 July 2016.

### 2.3 **Recognised service—contract cleaning industry**

- (1) In this schedule:

*recognised service*, for a registered worker in the contract cleaning industry, means the total number of days of service credit for all of the service periods of the worker less any days of service credit that the worker—

- (a) has been granted long service leave for; or
  - (b) has received a payment for instead of long service leave.
- (2) A registered worker for the contract cleaning industry is taken to have completed a year of recognised service for each 365 days of recognised service.

### 2.4 **Service credit—contract cleaning industry—s 64**

- (1) A registered worker for the contract cleaning industry is to be credited in the workers register with 1 day of service for each day (including a day when the worker does not carry out cleaning work) in each service period of the worker on or after the worker's registration day.

#### **Example**

A day when a worker attends a court in accordance with a summons to serve as a juror or a subpoena to give evidence or produce documents is a day in the service period for the worker when the worker does not carry out cleaning work.

*Note* Prior service is also credited in the workers register in accordance with, for employees, s 47, and for voluntary members, s 48.



- (2) However, the registrar must not enter more than 365 days of service in the workers register for the worker for the financial year.

#### **2.4A Service period—contract cleaning industry**

- (1) A *service period* for a person who is a registered worker for the contract cleaning industry is a continuous period—
- (a) beginning on the day when the person becomes a worker for the industry; and
  - (b) ending on the day when the person stops being a worker for the industry.
- (2) For subsection (1), a person stops being an employee for an employer for the industry at the end of a quarter if—
- (a) if the employee was an employee of only 1 employer for the industry in the quarter—the employer’s return under section 49 for the following quarter shows no ordinary remuneration for the employee; or
  - (b) if the employee was an employee of 2 or more employers for the industry in the quarter—none of the employers’ returns under section 49 for the following quarter shows ordinary remuneration for the employee.
- (3) Despite subsection (1), a registered worker’s service period is not taken to end if a person stops being a worker because—
- (a) of incapacity for an injury for which the worker is entitled to compensation under the *Workers Compensation Act 1951*; or
  - (b) if the worker is an employee—the employee has been dismissed by an employer to ensure that the employee does not take long service leave while in the employer’s employment; or

- (c) if the worker is a voluntary member—the voluntary member’s engagement by the employer is ended to ensure that the voluntary member does not take long service leave while engaged by the employer.

## 2.5 Long service leave formula—contract cleaning industry

The following is the *long service leave formula* for the contract cleaning industry:

$$W = 0.8667 \times \frac{RS}{365}$$

*RS* means the registered worker’s number of days recognised service.

*W* means the number of weeks long service leave held by the registered worker.

## 2.6 Amount of leave—contract cleaning industry

- (1) A registered worker for the contract cleaning industry who has 7 years or more recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the contract cleaning industry.
- (2) A registered worker for the contract cleaning industry is entitled to long service leave for additional days of service worked out in accordance with the long service leave formula if the worker—
  - (a) becomes entitled to long service leave under this Act; and
  - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.
- (3) A registered worker for the contract cleaning industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—
  - (a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(4) A determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act*.

## **2.7 Grant of leave by employers—contract cleaning industry**

(1) The employer of a registered employee for the contract cleaning industry commits an offence if—

(a) the employee's long service leave accrues; and

(b) the employer does not grant the employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

(2) Long service leave must not be granted for a period of less than 2 weeks.

(3) The employer of a registered employee for the contract cleaning industry commits an offence if—

(a) the employer has granted the employee long service leave; and

(b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—

(i) 2 months before the day when the long service leave starts;  
or

(ii) if the employer and employee agree on a shorter period—  
before the start of the period agreed.

Maximum penalty: 50 penalty units.

(4) An offence against this section is a strict liability offence.

(5) In this section:

*prescribed period*, for long service leave accrued by a registered employee for the contract cleaning industry of an employer, means—

- (a) 6 months after the day the leave accrues; or
- (b) if the governing board has allowed, on application by the employer or the employee, a period longer than 6 months—the period allowed by the board; or
- (c) if the employer and employee agree on a period longer than 6 months—the period agreed.

## **2.8 Entitlement to payment instead of leave—contract cleaning industry**

(1) This section applies to a registered worker for the contract cleaning industry who has 5 years recognised service if—

- (a) the worker has permanently left the industry; and
- (b) 20 weeks have passed since the day the worker permanently left the industry; and
- (c) the worker has not been credited with service in the workers register for any of the days in the 20-week period.

(2) However, subsection (1) (b) and (c) does not apply to a registered worker if—

- (a) the worker has permanently left the contract cleaning industry; and
- (b) the worker has not been credited with service in the workers register for any of the days after the worker permanently left the contract cleaning industry; and
- (c) either—
  - (i) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

- (ii) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.
- (3) Also, this section applies to a registered worker for the contract cleaning industry if the worker—
  - (a) has left the industry during—
    - (i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or
    - (ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and
  - (b) satisfies the criteria determined by the Minister.
- (4) Also, this section applies to a registered worker for the contract cleaning industry if the worker has 5 years recognised service and any of the following apply to the worker:
  - (a) the worker has left the industry because of total incapacity;
  - (b) the worker has reached the prescribed retiring age;
  - (c) the worker has died.
- (5) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—
  - (a) if subsection (1) or (4) applies to the worker—the number of weeks long service leave worked out in accordance with the long service leave formula; or
  - (b) if subsection (3) applies to the worker—the amount of long service leave determined by the Minister.

- (6) A determination under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (7) In this section:

*prescribed retiring age* means—

- (a) for a registered worker who has been granted a service pension under the *Veterans' Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or
- (b) in any other case—55 years.

## 2.9 Payments for leave—contract cleaning industry

- (1) A registered employee for the contract cleaning industry who has been granted long service leave under section 2.7, or a registered voluntary member who for the industry is entitled to long service leave, may apply to the authority for payment for the leave.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (2) The authority must pay to the applicant the amount payable under section 2.11 (How are leave payments worked out for the contract cleaning industry?) if the governing board is satisfied that—
- (a) the applicant is entitled to long service leave under this Act for work done in the contract cleaning industry; and
- (b) the applicant has been granted leave by the applicant's employer.
- (3) The authority must pay an applicant any amount payable under subsection (2) not later than 21 days after the worker's application has been made.

**2.10 Payments instead of leave—contract cleaning industry**

- (1) If a registered worker for the contract cleaning industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (2) An application by a registered employee for the contract cleaning industry on the ground that the employee has ceased work in the contract cleaning industry because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry.
- (3) The governing board may require an applicant mentioned in subsection (2) to submit himself or herself to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.
- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse, to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under section 2.11.

**2.11 How are leave payments worked out for the contract cleaning industry?**

- (1) For section 2.9 (Payments for leave—contract cleaning industry) and section 2.10 (Payments instead of leave—contract cleaning industry), the amount payable to a registered worker for, or instead of, long service leave is—
  - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 2.12; and
  - (b) for any part of the entitlement to long service leave accrued as a voluntary member—the amount worked out in accordance with section 2.13.
- (2) For subsection (1)—
  - (a) long service leave must be taken in the reverse order in which it accrued; and
  - (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

**Example**

Patricia has 10 years of service in the contact cleaning industry giving her an entitlement to 8.3 weeks long service leave. She first worked in the industry as a registered employee and accrued 5 weeks of the entitlement in that capacity. Patricia then worked as a registered voluntary member and accrued 3.3 weeks of the entitlement in that capacity.

Patricia decides to take 7 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 2.12 where ‘D’ is 1825 (ie it took 1825 days of service as a registered employee to accrue the first 5 weeks of her long service leave entitlement);



- the amount calculated under s 2.13 which is the total of the amounts paid to the authority under s 57 for her first 2.41 years work as a registered voluntary member (ie it took that period of service as a registered voluntary member to accrue the next 2 weeks of her long service leave entitlement) and the interest under s 2.13 on those amounts.

## 2.12 Leave payments for service as registered employee—contract cleaning industry

- (1) For section 2.11, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the contract cleaning industry is the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$

- (2) In this section:

*D* means the number of days of service credited to the registered worker in the workers register to which the payment relates.

*designated day* means—

- if the registered worker is taking long service leave—the day the leave begins; and
- if the registered worker is being paid instead of taking long service leave—the day the payment is made.

*R* is—

- if the registered worker is receiving compensation under the *Workers Compensation Act 1951*—the weekly average of the ordinary remuneration received by the worker during the 4 quarters before the injury to which the compensation relates happened; or

- (b) in any other case—the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:
- (i) the most recent 2 quarters of service as a registered employee before the designated day;
  - (ii) the most recent 4 quarters of service as a registered employee before the designated day;
  - (iii) the most recent 20 quarters of service as a registered worker before the designated day;
  - (iv) the most recent 40 quarters of service as a registered worker before the designated day.

**Example—R, par (b)**

Henry has worked in the cleaning industry for 7 years. The periods in par (b) (i), (ii) and (iii) apply to Henry because he has completed more than 20 quarters (or 5 years), but less than 40 quarters (or 10 years), relevant service.

Henry's average weekly income for the 2 quarters before the designated day is \$283. His weekly averages for the 4 and 20 quarters before the designated day are \$427 and \$375, respectively. Accordingly, 'R' is \$427 because it is the highest of the weekly averages.

**2.13 Leave payments for service as registered voluntary member—contract cleaning industry**

- (1) For section 2.11 (How are leave payments worked out for the contract cleaning industry?), the amount payable to a registered worker for the contract cleaning industry for long service leave for service accrued as a registered voluntary member is the total of the following for the service:
- (a) amounts paid by the worker to the authority under section 56 (Determination of levy—voluntary members);
  - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.

- (2) The governing board must determine an interim rate of interest from time to time before the determination of the rate under subsection (1).
- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
  - (a) if the contract cleaning scheme industry funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
  - (b) if the fund did not make a return or made a loss—nil.
- (4) In this section:  
*designated day* means—
  - (a) if the registered worker is taking long service leave—the day the leave begins; and
  - (b) if the registered worker is being paid instead of taking long service leave—the day the payment is made.

#### **2.14 Payments by authority on reciprocal authority's behalf—contract cleaning industry**

- (1) This section applies to a registered worker for the contract cleaning industry who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.  
*Note* If a form is approved under s 92 for an application, the form must be used.
- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

**2.15 Payments by reciprocal authority on authority's behalf—contract cleaning industry**

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the contract cleaning industry.
- (2) If the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.
- (4) In subsection (2):

*D* means the number of days of service credited to the registered employee in the workers register and to which the payment relates.

*R* is the amount decided by the reciprocal authority as the weekly amount payable to the worker for the service credited to the worker in the State.

**2.17 Records of payments and service—contract cleaning industry**

- (1) This section applies if the authority—
  - (a) pays an amount to a registered worker for the contract cleaning industry under section 2.9 (Payments for leave—contract cleaning industry) or section 2.10 (Payments instead of leave—contract cleaning industry); or

- (b) reimburses a reciprocal authority under section 2.15 (Payments by reciprocal authority on authority's behalf—contract cleaning industry) for an amount paid to a registered worker.
- (2) The authority must delete from the workers register the details relating to the service period for which the worker has been paid.
- (3) However, the authority must keep another record of—
  - (a) the period of the service; and
  - (b) the amount paid to the worker for long service leave or instead of long service leave; and
  - (c) the period of long service leave (if any) granted to or taken by the worker.

**2.18 Public holidays not to count as leave—contract cleaning industry**

- (1) This section applies if a public holiday falls during a period of long service leave taken by a registered worker for the contract cleaning industry.
- (2) The period of long service leave is increased by 1 day for each public holiday.

## Schedule 3 Long service leave payments—community sector industry

### 3.1 What is the *community sector industry*?

- (1) The *community sector industry* is—
- (a) in relation to the ACT, any of the following:
    - (i) the industry of providing education and care services;
    - (ii) the industry of providing residential aged care services;
    - (iii) the industry of providing community aged care services;
    - (iv) the industry of providing employment placement services for disabled people;
    - (v) the industry of providing the following residential care services:
      - (A) care accommodation or homes for disadvantaged people where nursing or medical care is not provided as a major service;
      - (B) residential corrective services for young offenders;
    - (vi) the industry of providing community service advocacy services;
    - (vii) the industry of providing non-residential care welfare services (including fund-raising services for welfare services) not included in subparagraphs (i) to (vi); and
  - (b) in relation to a reciprocating State—the community sector industry within the meaning of the corresponding law of the State.

*Note* The definition of *community sector industry* was broadened to include residential aged care services and community aged care services with effect from 1 July 2016.

- (2) In this section:

***education and care service*** means an approved education and care service under the *Education and Care Services National Law (ACT)*, section 5 (1).

*Note* The *Education and Care Services National Law (ACT) Act 2011*, s 6 applies the Education and Care Services National Law set out in the *Education and Care Services National Law Act 2010 (Vic)*, schedule as if it were an ACT law called the *Education and Care Services National Law (ACT)*.

### 3.2 What is ***community sector work***?

In this Act:

***community sector work*** means work carried out in the community sector industry.

*Note* The Minister may declare work or an activity to be community sector work (see s 12 (2) (d)) or to not be community sector work (see s 13 (2) (d)).

### 3.3 ***Recognised service—community sector industry***

- (1) In this schedule:

***recognised service***, for a registered worker in the community sector industry, means the total number of days of service credit for all of the service periods of the worker less any days of service credit that the worker—

- (a) has been granted long service leave for; or
- (b) has received a payment for instead of long service leave.

- (2) A registered worker for the community sector industry is taken to have completed a year of recognised service for each 365 days of recognised service.

**3.4 Court or tribunal—not employer**

A court or tribunal is not an employer for the community sector industry.

*Note* A covered industry schedule may prescribe an entity not to be an employer for the covered industry—see s 7 (3).

**3.5 Service credit—community sector industry—s 64**

- (1) A registered worker for the community sector industry is to be credited in the workers register with 1 day of service for each day (including a day when the worker does not carry out community sector work) in each service period of the worker on or after the worker's registration day.

**Example**

A day when a worker attends a court in accordance with a summons to serve as a juror or a subpoena to give evidence or produce documents is a day in the service period for the worker when the worker does not carry out community sector work.

*Note* Prior service is also credited in the workers register in accordance with, for employees, s 47, and for voluntary members, s 48.

- (2) However, the registrar must not enter more than 365 days of service in the workers register for the worker for the financial year.

**3.5A Service period—community sector industry**

- (1) A *service period* for a person who is a registered worker for the community sector industry is a continuous period—
  - (a) beginning on the day when the person becomes a worker for the industry; and
  - (b) ending on the day when the person stops being a worker for the industry.



- (2) For subsection (1), a person stops being an employee for an employer for the industry at the end of a quarter if—
- (a) if the employee was an employee of only 1 employer for the industry in the quarter—the employer’s return under section 49 for the following quarter shows no ordinary remuneration for the employee; or
  - (b) if the employee was an employee of 2 or more employers for the industry in the quarter—none of the employers’ returns under section 49 for the following quarter shows ordinary remuneration for the employee.
- (3) Despite subsection (1), a registered worker’s service period is not taken to end if a person stops being a worker because—
- (a) of incapacity for an injury for which the worker is entitled to compensation under the *Workers Compensation Act 1951*; or
  - (b) if the worker is an employee—the employee has been dismissed by an employer to ensure that the employee does not take long service leave while in the employer’s employment; or
  - (c) if the worker is a voluntary member—the voluntary member’s engagement by the employer is ended to ensure that the voluntary member does not take long service leave while engaged by the employer.

### 3.6 Long service leave formula—community sector industry

The following is the *long service leave formula* for the community sector industry:

$$W = 0.8667 \times \frac{RS}{365}$$

*RS* means the registered worker’s number of days recognised service.

*W* means the number of weeks long service leave held by the registered worker.

**3.7 Amount of leave—community sector industry**

- (1) A registered worker for the community sector industry who has 5 years or more of recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the community sector industry.
- (2) A registered worker for the community sector industry is entitled to long service leave for additional days of service worked out in accordance with the long service leave formula if the worker—
  - (a) becomes entitled to long service leave under this Act; and
  - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.
- (3) A registered worker for the community sector industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—
  - (a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or
  - (b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.
- (4) A determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**3.8 Grant of leave by employers—community sector industry**

- (1) The employer of a registered employee for the community sector industry commits an offence if—
  - (a) the employee's long service leave accrues; and

- (b) the employer does not grant the employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.
- (3) The employer of a registered employee for the community sector industry commits an offence if—
  - (a) the employer has granted the employee long service leave; and
  - (b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—
    - (i) 2 months before the day when the long service leave starts; or
    - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

*prescribed period*, for long service leave accrued by a registered employee for the community sector industry of an employer, means—

- (a) 6 months after the day the leave accrues; or
- (b) if the governing board has allowed, on application by the employer or the employee, a period longer than 6 months—the period allowed by the board; or
- (c) if the employer and employee agree on a period longer than 6 months—the period agreed.

### 3.9 Entitlement to payment instead of leave—community sector industry

- (1) This section applies to a registered worker for the community sector industry if the worker has 5 years recognised service and any of the following apply to the worker:
  - (a) the worker has left the industry because of total incapacity;
  - (b) the worker has reached the prescribed retiring age;
  - (c) the worker has died.
- (2) Also, this section applies to a registered worker for the community sector industry if the worker—
  - (a) has left the industry during—
    - (i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or
    - (ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and
  - (b) satisfies the criteria determined by the Minister.
- (3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—
  - (a) if subsection (1) applies to the worker—the number of weeks long service leave worked out in accordance with the long service leave formula; or
  - (b) if subsection (2) applies to the worker—the amount of long service leave determined by the Minister.
- (4) A determination under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (5) In this section:

***prescribed retiring age*** means—

- (a) for a registered worker who has been granted a service pension under the *Veterans' Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or
- (b) in any other case—55 years.

### **3.10 Payments for leave—community sector industry**

- (1) A registered employee for the community sector industry who has been granted long service leave under section 3.7, or a registered voluntary member who for the industry is entitled to long service leave, may apply to the authority for payment for the leave.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (2) The authority must pay to the applicant the amount payable under section 3.12 (How are leave payments worked out for the community sector industry?) if the registrar is satisfied that—
- (a) the applicant is entitled to long service leave under this Act for work done in the community sector industry; and
  - (b) the applicant has been granted leave by the applicant's employer.
- (3) The authority must pay an applicant any amount payable under subsection (2) 21 days after the application has been made.

### **3.11 Payments instead of leave—community sector industry**

- (1) If a registered worker for the community sector industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (2) An application by a registered employee for the community sector industry on the ground that the employee has ceased work in the community sector industry because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry.
- (3) The governing board may require an applicant mentioned in subsection (2) to submit himself or herself to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.
- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse, to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under section 3.10.

### **3.12 How are leave payments worked out for the community sector industry?**

- (1) For section 3.10 (Payments for leave—community sector industry) and section 3.11 (Payments instead of leave—community sector industry), the amount payable to a registered worker for, or instead of, long service leave is—
  - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 3.13; and
  - (b) for any part of the entitlement to long service leave accrued as a voluntary member—the amount worked out in accordance with section 3.14.

- (2) For subsection (1)—
- (a) long service leave must be taken in the reverse order in which it accrued; and
  - (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

**Example**

Darla has 5 years of service in the community sector industry giving her an entitlement to 4.335 weeks long service leave. She first worked in the industry as a registered employee and accrued 2 weeks of the entitlement in that capacity. Darla then worked as a registered voluntary member and accrued 2.335 weeks of the entitlement in that capacity.

Darla decides to take 4.335 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 3.13 where ‘D’ is 842 (ie it took 842 days of service as a registered employee to accrue the first 2 weeks of her long service leave entitlement);
- the amount calculated under s 3.14 which is the total of the amounts paid to the authority under s 57 for her 983 days work as a registered voluntary member (ie it took that period of service as a registered voluntary member to accrue the next 2.335 weeks of her long service leave entitlement) and the interest under s 3.14 on those amounts.

### 3.13 Leave payments for service as registered employee—community sector industry

- (1) For section 3.12, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the community sector industry is the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$

(2) In this section:

**D** means the number of days of service credited to the registered worker in the workers register to which the payment relates.

**designated day** means—

- (a) if the registered worker is taking long service leave—the day the leave begins; and
- (b) if the registered worker is being paid instead of taking long service leave—the day the payment is made.

**R** is—

- (a) if the registered worker is receiving compensation under the *Workers Compensation Act 1951*—the weekly average of the ordinary remuneration received by the worker during the 4 quarters before the injury to which the compensation relates happened; or
- (b) in any other case—the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:
  - (i) the most recent 2 quarters of service as a registered employee before the designated day;
  - (ii) the most recent 4 quarters of service as a registered employee before the designated day;
  - (iii) the most recent 20 quarters of service as a registered worker before the designated day.

**Example—R, par (b)**

Harry has worked in the community sector industry for 5 years. The periods in par (b) (i), (ii) and (iii) apply to Harry because he has completed more than 20 quarters (or 5 years) relevant service.

Harry's average weekly income for the 2 quarters before the designated day is \$283. His weekly averages for the 4 and 20 quarters before the designated day are \$427 and \$375, respectively. Accordingly, 'R' is \$427 because it is the highest of the weekly averages.



**3.14 Leave payments for service as registered voluntary member—community sector industry**

- (1) For section 3.12 (How are leave payments worked out for the community sector industry?), the amount payable to a registered worker for the community sector industry for long service leave for service accrued as a registered voluntary member is the total of the following for the service:
  - (a) amounts paid by the worker to the authority under section 56 (Determination of levy—voluntary members);
  - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.
- (2) The governing board must determine an interim rate of interest from time to time before the determination of the rate under subsection (1).
- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
  - (a) if the community sector industry scheme funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
  - (b) if the fund did not make a return or made a loss—nil.
- (4) In this section:

***designated day*** means—

  - (a) if the registered worker is taking long service leave—the day the leave begins; and
  - (b) if the registered worker is being paid instead of taking long service leave—the day the payment is made.

**3.15 Payments by authority on reciprocal authority's behalf—community sector industry**

- (1) This section applies to a registered worker for the community sector industry who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

**3.16 Payments by reciprocal authority on authority's behalf—community sector industry**

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the contract cleaning industry.
- (2) If the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.
- (4) In subsection (2):

*D* means the number of days of service credited to the registered employee in the workers register and to which the payment relates.

*R* is the amount decided by the reciprocal authority as the weekly amount payable to the worker for the service credited to the worker in the State.

### **3.18 Records of payments and service—community sector industry**

- (1) This section applies if the authority—
  - (a) pays an amount to a registered worker for the community sector industry under section 3.10 (Payments for leave—community sector industry) or section 3.11 (Payments instead of leave—community sector industry); or
  - (b) reimburses a reciprocal authority under section 3.16 (Payments by reciprocal authority on authority’s behalf—community sector industry) for an amount paid to a registered worker.
- (2) The authority must delete from the workers register the details relating to the service period for which the worker has been paid.
- (3) However, the authority must keep another record of—
  - (a) the period of the service; and
  - (b) the amount paid to the worker for long service leave or instead of long service leave; and
  - (c) the period of long service leave (if any) granted to or taken by the worker.

### **3.19 Public holidays etc not to count as leave—community sector industry**

- (1) This section applies if a public holiday or industry holiday falls during a period of long service leave taken by a registered worker for the community industry.
- (2) The period of long service leave is increased by 1 day for each public holiday and industry holiday.

(3) In this section:

***industry holiday*** means a day that is a holiday for people employed in the community sector industry under a fair work instrument made under the *Fair Work Act 2009* (Cwlth).

## Schedule 4 Long service leave payments—security industry

(see s 6)

### 4.1 What is the *security industry*?

- (1) The *security industry* is—
  - (a) in relation to the ACT—the industry in which security activities are undertaken by people licensed to undertake the activities under the *Security Industry Act 2003*; and
  - (b) in relation to a reciprocating State—the security industry within the meaning of the corresponding law of the State.

*Note* *State* includes the Northern Territory (see *Legislation Act*, dict, pt 1).

- (2) In this section—

*security activity* means an activity within the meaning of the *Security Industry Act 2003*, section 7 (1) (a) to (h).

### 4.2 What is *security work*?

In this Act:

*security work* means work carried out in the security industry.

*Note* The Minister may declare work or an activity to be work in the security industry (see s 12 (2) (d)) or to not be work in the security industry (see s 13 (2) (d)).

### 4.3 *Recognised service*—security industry

- (1) In this schedule:

*recognised service*, for a registered worker in the security industry, means the total number of days of service credit for all of the service periods of the worker less any days of service credit that the worker—

- (a) has been granted long service leave for; or

(b) has received a payment for instead of long service leave.

- (2) A registered worker for the security industry is taken to have completed a year of recognised service for each 365 days of recognised service.

#### 4.4 Court or tribunal—not employer

A court or tribunal is not an employer for the security industry.

*Note* A covered industry schedule may prescribe an entity not to be an employer for the covered industry—see s 7 (3) (e).

#### 4.5 Service credit—security industry—s 64

- (1) A registered worker for the security industry is to be credited in the workers register with 1 day of service for each day (including a day when the worker does not carry out security work) in each service period of the worker on or after the worker’s registration day.

##### **Example**

A day when a worker attends a court in accordance with a summons to serve as a juror or a subpoena to give evidence or produce documents is a day in the service period for the worker when the worker does not carry out security work.

*Note* Prior service is also credited in the workers register in accordance with, for employees, s 47, and for voluntary members, s 48.

- (2) However, the registrar must not enter more than 365 days of service in the workers register for the worker for the financial year.

#### 4.5A Service period—security industry

- (1) A *service period* for a person who is a registered worker for the security industry is a continuous period—
- (a) beginning on the day when the person becomes a worker for the industry; and
  - (b) ending on the day when the person stops being a worker for the industry.

- (2) For subsection (1), a person stops being an employee for an employer for the industry at the end of a quarter if—
- (a) if the employee was an employee of only 1 employer for the industry in the quarter—the employer’s return under section 49 for the following quarter shows no ordinary remuneration for the employee; or
  - (b) if the employee was an employee of 2 or more employers for the industry in the quarter—none of the employers’ returns under section 49 for the following quarter shows ordinary remuneration for the employee.
- (3) Despite subsection (1), a registered worker’s service period is not taken to end if a person stops being a worker because—
- (a) of incapacity for an injury for which the worker is entitled to compensation under the *Workers Compensation Act 1951*; or
  - (b) if the worker is an employee—the employee has been dismissed by an employer to ensure that the employee does not take long service leave while in the employer’s employment; or
  - (c) if the worker is a voluntary member—the voluntary member’s engagement by the employer is ended to ensure that the voluntary member does not take long service leave while engaged by the employer.

#### 4.6 Long service leave formula—security industry

The following is the *long service leave formula* for the security industry:

$$W = 0.8667 \times \frac{RS}{365}$$

*RS* means the registered worker’s number of days recognised service.

*W* means the number of weeks long service leave held by the worker.

**4.7 Amount of leave—security industry**

- (1) A registered worker for the security industry who has 7 years or more recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the security industry.
- (2) A registered worker for the security industry is entitled to additional long service leave worked out in accordance with the long service leave formula for the security industry if the worker—
  - (a) becomes entitled to long service leave under this Act for work done in the industry; and
  - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.
- (3) A registered worker for the security industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—
  - (a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or
  - (b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.
- (4) A determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).



**4.8 Grant of leave by employers—security industry**

- (1) The employer of a registered employee for the security industry commits an offence if—
- (a) the employee’s long service leave accrues; and
  - (b) the employer does not grant the employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.
- (3) The employer of a registered employee for the security industry commits an offence if—
- (a) the employer has granted the employee long service leave; and
  - (b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—
    - (i) not later than 2 months after the day when the long service leave starts; or
    - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

***prescribed period***, for long service leave accrued by a registered employee for the security industry of an employer, means—

- (a) 6 months after the day the leave accrues; or

- (b) if the governing board has allowed, on application by the employee, a period longer than 6 months—the period allowed by the board; or
- (c) if the employer and employee agree on a period longer than 6 months—the period agreed.

**4.9 Entitlement to payment instead of leave—security industry**

- (1) This section applies if a registered worker for the security industry has 5 years recognised service and any of the following apply to the worker:
  - (a) the worker has left the industry because of total incapacity;
  - (b) the worker has reached the prescribed retiring age;
  - (c) the worker has died.
- (2) Also, this section applies to a registered worker for the security industry if the worker—
  - (a) has left the industry during—
    - (i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or
    - (ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and
  - (b) satisfies the criteria determined by the Minister.
- (3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—
  - (a) if subsection (1) applies to the worker—the amount of long service leave worked out in accordance with the long service leave formula; or

(b) if subsection (2) applies to the worker—the amount of long service leave determined by the Minister.

(4) A determination under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

(5) In this section:

*prescribed retiring age*—

(a) for a registered worker who has been granted a service pension under the [Veterans Entitlements Act 1986](#) (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or

(b) in any other case—55 years.

#### **4.10 Payments for leave—security industry**

(1) A registered employee for the security industry who has been granted long service leave under section 4.7, or a registered voluntary member for the industry who is entitled to long service leave, may apply to the authority for payment for the leave.

*Note* If a form is approved under s 92 for this provision, the form must be used.

(2) The authority must pay to the applicant the amount payable under section 4.12 (How are payments worked out for the security industry?) if the registrar is satisfied that—

(a) the applicant is entitled to long service leave under this Act for work done in the security industry; and

(b) the applicant has been granted leave by the applicant's employer.

(3) The authority must pay an applicant any amount payable under subsection (2) not later than 21 days after the worker's application has been made.

**4.11 Payment instead of leave—security industry**

- (1) If a registered worker for the security industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

*Note* If a form is approved under s 92 for this provision, the form must be used.

- (2) An application by a registered employee for the security industry on the ground that the employee has ceased work in the security industry because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry.
- (3) The governing board may require an applicant mentioned in subsection (2) to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.
- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under section 4.12.

**4.12 How are payments worked out for the security industry?**

- (1) For section 4.10 and section 4.11, the amount payable to a registered worker for, or instead of, long service leave is—
- (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 4.13; and

- (b) for any part of the entitlement to long service leave accrued as a voluntary member—the amount worked out in accordance with section 4.14.
- (2) For subsection (1)—
- (a) long service leave must be taken in the reverse order in which it accrued; and
- (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

**Example**

Trevor has 7 years of service in the security industry giving him an entitlement to 6.0669 weeks long service leave. He first worked in the industry as a registered employee and accrued 4.3335 weeks of the entitlement in that capacity. Trevor then worked as a registered voluntary member and accrued 1.7334 weeks of the entitlement in that capacity.

Trevor decides to take 6.0669 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 4.13 where ‘D’ is 1825 (ie it took 1825 days of service as a registered employee to accrue the first 4.3335 weeks of his long service leave entitlement);
- the amount calculated under s 4.14 which is the total of the amounts paid to the authority under s 56 for his 730 days work as a registered voluntary member (ie it took that period of service as a registered voluntary member to accrue the next 1.7334 weeks of his long service leave entitlement) and the interest under s 4.14 on those amounts.

**4.13 Leave payments for service as registered employee—security industry**

For section 4.12, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the security industry is the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$

*D* means the number of days of service credited to the registered worker in the workers register to which the payment relates.

*designated day* means—

- (a) if the registered worker is taking long service leave—the day the leave begins; and
- (b) if the registered worker is being paid instead of taking long service leave—the day the payment is made.

*R* is—

- (a) if the registered worker is receiving compensation under the *Workers Compensation Act 1951*—the weekly average of the ordinary remuneration received by the worker during the 4 quarters before the injury to which the compensation relates happened; or
- (b) in any other case—the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:
  - (i) the most recent 2 quarters of service as a registered employee before the designated day;
  - (ii) the most recent 4 quarters of service as a registered employee before the designated day;

- (iii) the most recent 20 quarters of service as a registered worker before the designated day.

**Example—R, par (b)**

Danijela has worked in the security industry for 5 years. The periods in par (b) (i), (ii) and (iii) apply to Danijela because she has completed more than 20 quarters (or 5 years) relevant service.

Danijela's average weekly income for the 2 quarters before the designated day is \$283. Her weekly averages for the 4 and 20 quarters before the designated day are \$427 and \$375, respectively. Accordingly, 'R' is \$427 because it is the highest of the weekly averages.

**4.14 Leave payments for service as registered voluntary member—security industry**

- (1) For section 4.12 (How are payments worked out for the security industry?), the amount payable to a registered worker for the security industry for long service leave for service accrued as a registered voluntary member is the total of the following for the service:
- (a) amounts paid by the worker to the authority under section 56 (Determination of levy—voluntary members);
  - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.
- (2) The governing board must determine an interim rate of interest from time to time before the determination of the rate under subsection (1).
- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
- (a) if the security industry scheme funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
  - (b) if the fund did not make a return or made a loss—nil.

- (4) In this section:

*designated day* means—

- (a) if the registered worker is taking long service leave—the day the leave begins; and
- (b) if the registered worker is being paid instead of taking long service leave—the day the payment is made.

**4.15 Payments by authority on reciprocal authority’s behalf—security industry**

- (1) This section applies to a registered worker for the security industry who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.

*Note* If a form is approved under s 92 for an application, the form must be used.

- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

**4.16 Payments by reciprocal authority on authority’s behalf—security industry**

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the security industry.
- (2) If the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$



**D** means the number of days of service credited to the person in the workers register for service as an employee and to which the payment relates.

**R** is the amount decided by the reciprocal authority as the weekly amount payable to the person for the service credited to the person in the State.

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.

#### **4.18 Records of payments and service—security industry**

- (1) This section applies if the authority—
- (a) pays an amount to a registered worker for the security industry under section 4.10 (Payments for leave—security industry) or section 4.11 (Payment instead of leave—security industry); or
  - (b) reimburses a reciprocal authority under section 4.16 (Payments by reciprocal authority on authority’s behalf—security industry) for an amount paid to a registered worker for the industry.
- (2) The authority must delete from the workers register the details relating to the period of service for which the worker has been paid.
- (3) However, the authority must keep another record of—
- (a) the period of service; and
  - (b) the amount paid to the worker for long service leave or instead of long service leave; and
  - (c) the period of long service leave (if any) granted to or taken by the worker.

**4.19 Public holidays not to count as leave—security industry**

- (1) This section applies if a public holiday falls during a period of long service leave taken by a registered employee for the security industry.
- (2) The period of long service leave is increased by 1 day for each public holiday.

## Schedule 5 Reviewable decisions

(see s 80, def *reviewable decision*)

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
1	31 (1) (b)	refuse to allow additional time for application for registration by employer	employer	registrar
2	32 (2)	refuse to register person as employer	person	registrar
3	37 (4) (b)	confirm registrar's decision to refuse to register applicant as employer	applicant	governing board
4	45 (3) (a)	confirm registrar's decision to refuse to register applicant as worker	person	governing board
5	47	refuse to credit employee with prior service	employee	governing board
6	47	amount of prior service credited	employee	governing board

**Schedule 5**

Reviewable decisions

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
7	48	refuse to credit voluntary member with prior service	voluntary member	governing board
8	48	amount of prior service credited	voluntary member	governing board
9	49 (2) (b) (ii)	refuse to allow employer additional time for giving return to authority	employer	registrar
10	49A (1) (b)	refuse to allow employer additional time for giving return to authority	employer	registrar
11	49A (3)	refuse to waive all or part of late fee payable by employer	employer	registrar
12	52 (3)	refuse to waive all or part of interest payable by employer	employer	registrar
13	54 (1) (b)	refuse to allow registered voluntary member additional time for giving return to authority	registered voluntary member	registrar

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
14	60 (4) (b)	fix another amount as the total ordinary remuneration of worker for quarter	<ul style="list-style-type: none"> <li>worker</li> <li>if the worker is an employee—the worker's employer</li> </ul>	governing board
15	63 (2) (b)	refuse to allow additional time for person to pay amount	person	registrar
16	66 (1) (b)	refuse to direct registrar to re-register person	person	governing board
17	69 (4)	allow, or refuse to allow, objection to matter in certificate given to worker under s 67	<ul style="list-style-type: none"> <li>worker</li> <li>if the worker is an employee—the worker's employer</li> </ul>	governing board
18	69 (4)	allow, or refuse to allow, objection to matter in certificate given to employer under s 68	<ul style="list-style-type: none"> <li>employer</li> <li>employee to whom objection relates</li> </ul>	governing board
19	89 (2) (b)	not satisfied that amount paid by employer was properly paid	employer	registrar

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
20	89A (2)	refuse reimbursement of direct payment of long service leave	employer	registrar
21	sch 1, 1.7 (5) (b), sch 2, 2.7 (5) (b), sch 3, 3.8 (5) (b) or sch 4, 4.8 (5)	refuse to allow additional period	applicant	governing board
22	sch 1, 1.8 (5), sch 2, 2.8 (5), sch 3, 3.9 (3), or sch 4, 4.9 (3)	not satisfied that section applies to applicant	applicant	governing board
23	sch 1, 1.9 (2), sch 2, 2.9 (2), sch 3, 3.10 (2) or sch 4, 4.10 (2) (a)	not satisfied that applicant entitled to long service leave	applicant	governing board
24	sch 1, 1.10 (6), sch 2, 2.10 (6), sch 3, 3.11 (6) or sch 4, 4.11 (6)	not satisfied that applicant entitled to payment instead of long service leave	applicant	governing board

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## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- ACT
- contravene
- director-general (see s 163)
- disallowable instrument (see s 9)
- document
- Executive
- exercise
- function
- head of service
- in relation to
- public holiday
- public servant
- quarter
- reviewable decision notice
- State
- the Territory.

***apprentice*** means an apprentice other than a school-based apprentice.

***at premises***, for part 8 (Enforcement)—see section 70.

***authority*** means the Long Service Leave Authority established under section 79A.

***building and construction industry***—see schedule 1, section 1.1.

***building and construction work***—see schedule 1, section 1.2.

***cleaning work***—see schedule 2, section 2.2.

***community sector industry***—see schedule 3, section 3.1.

**community sector work**—see schedule 3, section 3.2.

**contract cleaning industry**—see schedule 2, section 2.1.

**corresponding law** means a law of the Commonwealth or a State about long service leave.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**covered industry**—see section 6.

**covered industry schedule** means—

- (a) for the building and construction industry—schedule 1; and
- (b) for the contract cleaning industry—schedule 2; and
- (c) for the community sector industry—schedule 3; and
- (d) for the security industry—schedule 4.

**day**—see section 14.

**decision-maker**, for a reviewable decision, for part 9 (Notification and review of decisions)—see section 80.

**employee**—see section 9.

**employer**—see section 7.

**employers register**—see section 30.

**governing board** means the governing board of the authority established under section 79E.

**internally reviewable decision**, for part 9 (Notification and review of decisions)—see section 80A (1).

**long service leave formula**—

- (a) for the building and construction industry—see schedule 1, section 1.5; and
- (b) for the contract cleaning industry—see schedule 2, section 2.5; and



- 
- (c) for the community sector industry—see schedule 3, section 3.6; and
  - (d) for the security industry—see schedule 4, section 4.6.

**occupier**, for part 8 (Enforcement)—see section 70.

**ordinary remuneration**—

- (a) means salary or wages, and allowances, paid or payable to a worker for work; and
- (b) includes worker's compensation payments made to a worker by the worker's employer; but
- (c) does not include—
  - (i) amounts paid to the worker for—
    - (A) working overtime; or
    - (B) reimbursement for expenses incurred by the worker; or
    - (C) the use of materials, equipment or a motor vehicle provided by the worker; or
  - (ii) allowances paid to the worker for travel, meals, or protective clothing; or
  - (iii) amounts paid to the worker on termination of employment including—
    - (A) payment in lieu of notice; and
    - (B) lump sum payment for accrued leave; and
    - (C) redundancy; or
  - (iv) superannuation contributions made by the worker's employer.

**premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle.

**reciprocal agreement**—see section 90.

**reciprocal authority** means the entity under a corresponding law that administers the scheme of long service benefits established by the law.

**reciprocating State** means a State in relation to which a reciprocal agreement is in force.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**recognised service**, for a registered worker—

- (a) in the building and construction industry—see schedule 1, section 1.3 (1); and
- (b) in the contract cleaning industry—see schedule 2, section 2.3 (1); and
- (c) in the community sector industry—see schedule 3, section 3.3 (1); and
- (d) in the security industry—see schedule 4, section 4.3 (1).

**registered employer** means a person who is registered under section 34.

**registered worker** means an individual who is registered under section 46.

**registrar** means the chief executive officer of the authority within the meaning of the [Financial Management Act 1996](#), dictionary, definition of *chief executive officer*.

**registration day**, in relation to a worker—see section 15.

**reviewable decision**, for part 9 (Notification and review of decisions)—see section 80.

***school-based apprentice*** means an apprentice to whom a school-based training arrangement, undertaken as part of a course of secondary education, applies.

***security industry***—see schedule 4, section 4.1.

***security work***—see schedule 4, section 4.2.

***service***, for a registered worker for a covered industry, means service in the covered industry.

***service period***, for a registered worker—

- (a) in the building and construction industry—see schedule 1, section 1.4A (1); and
- (b) in the contract cleaning industry—see schedule 2, section 2.4A (1); and
- (c) in the community sector industry—see schedule 3, section 3.5A (1); and
- (d) in the security industry—see schedule 4, section 4.5A (1).

***voluntary member***—see section 10.

***work***, in a covered industry—see section 11.

***worker***—see section 8.

***workers register***—see section 39.

## Endnotes

1 About the endnotes

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## 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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

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

### 3 Legislation history

#### **Long Service Leave (Portable Schemes) Act 2009 A2009-25**

notified LR 8 September 2009

s 1, s 2 commenced 8 September 2009 (LA s 75 (1))

remainder commenced 1 January 2010 (s 2)

as amended by

#### **Long Service Leave (Community Sector) Amendment Act 2009 A2009-42**

notified LR 23 November 2009

s 1, s 2 commenced 23 November 2009 (LA s 75 (1))

remainder commenced 1 July 2010 (s 2)

#### **Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.97**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.97 commenced 1 July 2011 (s 2 (1))

#### **Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.24**

notified LR 31 August 2011

s 1, s 2 commenced 31 August 2011 (LA s 75 (1))

sch 3 pt 3.24 commenced 21 September 2011 (s 2 (1))

#### **Long Service Leave (Portable Schemes) Amendment Act 2012 A2012-9**

notified LR 4 April 2012

s 1, s 2 commenced 4 April 2012 (LA s 75 (1))

remainder commenced 1 July 2012 (s 2 and [CN2012-7](#))

#### **Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.30**

notified LR 22 May 2012

s 1, s 2 commenced 22 May 2012 (LA s 75 (1))

sch 3 pt 3.30 commenced 5 June 2012 (s 2 (1))

## Endnotes

3 Legislation history

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### **Long Service Leave (Portable Schemes) (Security Industry) Amendment Act 2012 A2012-22**

notified LR 23 May 2012  
s 1, s 2 commenced 23 May 2012 (LA s 75 (1))  
remainder commenced 23 November 2012 (s 2 and LA s 79)

### **Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.26**

notified LR 24 May 2013  
s 1, s 2 commenced 24 May 2013 (LA s 75 (1))  
sch 3 pt 3.26 commenced 14 June 2013 (s 2)

### **Long Service Leave (Portable Schemes) Amendment Act 2013 A2013-49**

notified LR 4 December 2013  
s 1, s 2 commenced 4 December 2013 (LA s 75 (1))  
remainder commenced 1 January 2014 (s 2)

### **Training and Tertiary Education Amendment Act 2014 A2014-48 sch 1 pt 1.12**

notified LR 6 November 2014  
s 1, s 2 commenced 6 November 2014 (LA s 75 (1))  
sch 1 pt 1.12 commenced 20 November 2014 (s 2)

### **Statute Law Amendment Act 2015 (No 2) A2015-50 sch 3 pt 3.23**

notified LR 25 November 2015  
s 1, s 2 commenced 25 November 2015 (LA s 75 (1))  
sch 3 pt 3.23 commenced 9 December 2015 (s 2)

### **Long Service Leave (Portable Schemes) Amendment Act 2016 A2016-23**

notified LR 11 May 2016  
s 1, s 2 commenced 11 May 2016 (LA s 75 (1))  
remainder commenced 1 July 2016 (s 2)

### **Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.49**

notified LR 25 August 2016  
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))  
sch 1 pt 1.49 commenced 1 September 2016 (s 2)

**Road Transport Reform (Light Rail) Legislation Amendment Act 2017  
A2017-21 sch 1 pt 1.12**

notified LR 8 August 2017

s 1, s 2 commenced 8 August 2017 (LA s 75 (1))

sch 1 pt 1.12 commenced 15 August 2017 (s 2)

**Long Service Leave (Portable Schemes) Amendment Act 2019  
A2019-44**

notified LR 6 December 2019

s 1, s 2 commenced 6 December 2019 (LA s 75 (1))

remainder commenced 1 January 2020 (s 2)

**COVID-19 Emergency Response Act 2020 A2020-11 sch 1 pt 1.13**

notified LR 7 April 2020

s 1, s 2 commenced 7 April 2020 (LA s 75 (1))

sch 1 pt 1.13 commenced 8 April 2020 (s 2 (1))

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### What is a *covered industry*?

s 6 am [A2009-42](#) s 4, s 5; [A2012-22](#) s 4, s 5; [A2013-49](#) s 4

#### Who is an *employer*?

s 7 am [A2012-9](#) s 4; [A2013-49](#) ss 5-8; pars renum R11 LA

#### Who is a *worker*?

s 8 am [A2013-49](#) s 9, s 10; [A2019-44](#) s 35

#### Who is an *employee*?

s 9 am [A2013-49](#) s 11, s 12

#### Who is a *voluntary member*?

s 10 am [A2012-9](#) s 5; [A2013-49](#) s 13; [A2015-50](#) amdt 3.120  
sub [A2019-44](#) s 4

#### What is *work*?

s 11 am [A2012-9](#) s 6; ss renum R7 LA  
sub [A2013-49](#) s 14  
am [A2019-44](#) s 35

#### Declarations by Minister—additional coverage of Act

s 12 sub [A2013-49](#) s 14  
am [A2019-44](#) s 35

#### Declarations by Minister—limitation to coverage of Act

s 13 am [A2009-42](#) s 6; [A2012-22](#) s 6  
sub [A2013-49](#) s 14  
am [A2019-44](#) s 35

#### Meaning of *registration day*

s 15 am [A2013-49](#) s 15; pars renum R11 LA

#### Entitlement to long service leave

s 15A ins [A2013-49](#) s 16

#### Administration

pt 3 hdg renum as pt 8A hdg

#### The authority, governing board and staff

div 3.1 hdg renum as div 8A.1 hdg

#### Establishment of authority

s 16 renum as s 79A

#### Authority not territory instrumentality etc

s 17 renum as s 79B



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<b>Functions of authority</b>	
s 18	renum as s 79C
<b>Delegation by authority</b>	
s 19	renum as s 79D
<b>Establishment of governing board</b>	
s 20	renum as s 79E
<b>Governing board members</b>	
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s 27	renum as s 79L
<b>Authority money—separate funds for covered industries</b>	
s 28	renum as s 79M
<b>3-yearly investigation by actuary</b>	
s 29	renum as s 79N
<b>Employers registration</b>	
s 30	am <a href="#">A2012-9</a> s 8
<b>Application for registration by employers</b>	
s 31	am <a href="#">A2013-49</a> ss 21-23
<b>Dealing with applications after end of 1-month period</b>	
s 33	om <a href="#">A2012-9</a> s 9
<b>Order to apply for registration</b>	
s 38	am <a href="#">A2019-44</a> s 36
<b>Workers register</b>	
s 39	am <a href="#">A2012-9</a> s 10

## Endnotes

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

s 41 am [A2012-9](#) s 11

### **Registrar may register employee without application**

s 44 sub [A2013-49](#) s 24

### **Registration as worker**

s 46 am [A2013-49](#) s 25

### **Service credit—employee’s prior service**

s 47 sub [A2012-9](#) s 12  
am [A2013-49](#) ss 26-29; [A2019-44](#) s 5, s 6

### **Service credit—unreported service**

s 47A ins [A2019-44](#) s 7

### **Service credit—voluntary member’s prior service**

s 48 hdg am [A2019-44](#) s 37  
s 48 sub [A2012-9](#) s 12  
am [A2013-49](#) s 30; [A2019-44](#) ss 35-37

### **Quarterly returns by employers**

s 49 am [A2012-9](#) s 13  
sub [A2019-44](#) s 8

### **Late fee—quarterly return**

s 49A ins [A2019-44](#) s 8

### **Determination of levy—employers**

s 51 sub [A2012-9](#) s 14  
am [A2016-23](#) s 4

### **Interest payable on levy payment**

s 52 am [A2012-9](#) s 15  
sub [A2013-49](#) s 31; [A2019-44](#) s 9

### **Interest rate**

s 53 om [A2012-9](#) s 16  
ins [A2019-44](#) s 9

### **Quarterly returns by voluntary members**

s 54 hdg am [A2019-44](#) s 36  
s 54 am [A2012-9](#) s 17, s 18; ss renum R7 LA; [A2019-44](#) s 10, s 35,  
s 37

### **Levy payments by voluntary members**

s 55 hdg am [A2019-44](#) s 36  
s 55 am [A2019-44](#) s 35

### **Determination of levy—voluntary members**

s 56 hdg am [A2019-44](#) s 36  
s 56 am [A2016-23](#) s 5; [A2019-44](#) s 36

**Minor changes to levy—employers and voluntary members**

s 56A hdg am [A2019-44](#) s 36  
s 56A ins [A2016-23](#) s 6  
am [A2019-44](#) s 11, s 36

**Employers to keep records**

s 57 am [A2019-44](#) s 12

**Registered voluntary members to keep records**

s 58 hdg am [A2019-44](#) s 36  
s 58 am [A2019-44](#) s 35, s 37

**Liability of company directors to pay levy**

pt 5A hdg ins [A2019-44](#) s 13

**Application—pt 5A**

s 58A ins [A2019-44](#) s 13

**Liability of directors to pay levy**

s 58B ins [A2019-44](#) s 13

**Review of ordinary remuneration by governing board**

s 60 am [A2012-9](#) s 19; ss renum R7 LA; [A2019-44](#) s 35, s 36

**Notice of governing board decisions on review of ordinary remuneration**

s 61 am [A2012-9](#) s 20; [A2019-44](#) s 35, s 36

**Effect of variation of ordinary remuneration**

s 62 am [A2019-44](#) s 35, s 36

**Removing people from workers register**

s 65 am [A2009-42](#) s 7; [A2012-9](#) s 21; [A2013-49](#) s 32; [A2019-44](#)  
s 14, s 35

**Access to long service leave register information**

pt 7 hdg sub [A2012-9](#) s 22

**Information for registered workers**

s 67 sub [A2012-9](#) s 23  
am [A2019-44](#) s 35, s 36

**Information for employers**

s 68 sub [A2012-9](#) s 23  
am [A2013-49](#) s 33

**Certified copies of long service leave registers**

s 69 sub [A2012-9](#) s 23

**Appointment of inspectors**

s 71 am [A2011-22](#) amdt 1.301; [A2012-9](#) s 24

**Identity cards**

s 72 am [A2011-22](#) amdt 1.301; [A2012-9](#) s 25

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### **Power to obtain, inspect and copy records**

s 76 sub [A2019-44](#) s 15

### **Abrogation of privilege against self-incrimination**

s 76A ins [A2019-44](#) s 15

### **Warning to be given**

s 76B ins [A2019-44](#) s 15

### **Administration**

pt 8A hdg (prev pt 3 hdg) reloc and renum as pt 8A hdg [A2013-49](#) s 20

### **The authority, governing board and staff**

div 8A.1 hdg (prev div 3.1 hdg) reloc and renum as div 8A.1 hdg [A2013-49](#) s 20

### **Establishment of authority**

s 79A (prev s 16) reloc and renum as s 79A [A2013-49](#) s 20

### **Authority not territory instrumentality etc**

s 79B (prev s 17) reloc and renum as s 79B [A2013-49](#) s 20

### **Functions of authority**

s 79C (prev s 18) am [A2013-19](#) amdt 3.200  
reloc and renum as s 79C [A2013-49](#) s 20

### **Delegation by authority**

s 79D (prev s 19) am [A2012-9](#) s 7  
reloc and renum as s 79D [A2013-49](#) s 20

### **Establishment of governing board**

s 79E (prev s 20) am [A2013-19](#) amdt 3.201  
reloc and renum as s 79E [A2013-49](#) s 20

### **Governing board members**

s 79F (prev s 21) am [A2013-19](#) amdt 3.202  
reloc and renum as s 79F [A2013-49](#) s 20

### **Deputy chair**

s 79G (prev s 22) reloc and renum as s 79G [A2013-49](#) s 20

### **Deputy registrar**

s 79H (prev s 23) am [A2011-22](#) amdt 1.301  
reloc and renum as s 79H [A2013-49](#) s 20

### **Functions of governing board**

s 79I (prev s 24) reloc and renum as s 79I [A2013-49](#) s 20  
am [A2016-23](#) s 7; pars renum R14 LA; [A2019-44](#) s 36

### **Arrangements for staff**

s 79J (prev s 25) am [A2011-22](#) amdt 1.298  
reloc and renum as s 79J [A2013-49](#) s 20  
sub [A2016-52](#) amdt 1.133

**Finances**

div 8A.2 hdg (prev div 3.2 hdg) reloc and renum as div 8A.2 hdg [A2013-49](#) s 20

**Money of authority**

s 79K (prev s 26) am [A2013-49](#) s 17  
reloc and renum as s 79K [A2013-49](#) s 20  
am [A2019-44](#) s 36

**Application of authority money**

s 79L (prev s 27) sub [A2013-49](#) s 18  
reloc and renum as s 79L [A2013-49](#) s 20

**Authority money—separate funds for covered industries**

s 79M (prev s 28) am [A2013-49](#) s 19  
reloc and renum as s 79M [A2013-49](#) s 20

**3-yearly investigation by actuary**

s 79N (prev s 29) reloc and renum as s 79N [A2013-49](#) s 20  
am [A2019-44](#) s 36

**Definitions—pt 9**

s 80 def *internally reviewable decision* ins [A2012-9](#) s 26

**Internal review of certain decisions**

s 80A ins [A2012-9](#) s 27  
am [A2013-49](#) s 34

**Applications for internal review**

s 80B ins [A2012-9](#) s 27

**Internal review**

s 80C ins [A2012-9](#) s 27

**Review of decisions by ACAT**

s 82 sub [A2012-9](#) s 28; [A2013-49](#) s 35

**Evidentiary certificates**

s 83 am [A2019-44](#) s 36

**Disclosure of information to territory entities and reciprocal authorities**

s 84 am [A2011-22](#) amdt 1.301; [A2013-49](#) s 36

**Inspection of register**

s 85 om [A2012-9](#) s 29

**No contracting out**

s 86 sub [A2013-49](#) s 37

**No contracting out**

s 87 om [A2013-49](#) s 38

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### **Benefits under other laws—election**

s 88 am [A2009-42](#) s 8  
sub [A2013-49](#) s 39

### **Benefits under other laws—reimbursement of employer**

s 89 am [A2012-9](#) s 30

### **Authority reimbursement of certain payments**

s 89A (prev s 90A) ins [A2012-9](#) s 31  
am [A2013-49](#) s 41  
reloc and renum as s 89A [A2013-49](#) s 42  
am [A2019-44](#) s 16

### **Reciprocal agreements for corresponding laws**

s 90 am [A2013-49](#) s 40

### **Authority reimbursement of certain payments**

s 90A reloc and renum as s 89A

### **Determination of fees**

s 91 am [A2011-28](#) amdt 3.157

### **Legislation amended—sch 4**

s 94 om LA s 89 (3)

### **Legislation repealed—sch 5**

s 95 om LA s 89 (3)

### **Transitional**

pt 11 hdg exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))

### **Definitions—pt 11**

s 96 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))  
def **commencement day** exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))  
def **LSL (BCI) Act** exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))  
def **LSL (CCI) Act** exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))  
def **replaced entity** exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))

### **Transitional—rights and liabilities under repealed Acts**

s 97 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))

### **Transitional—entitlement to payment instead of leave**

s 97A ins [A2012-9](#) s 32

### **Vesting of assets and liabilities of replaced entities in authority**

s 98 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))

### **Registration of changes in title to certain assets**

s 99 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))

- Proceedings and evidence in relation to vested assets and liabilities**  
s 100 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Transitional—disclosure of information to territory entities and reciprocal authorities**  
s 101 am [A2011-22](#) amdt 1.301  
exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Transitional—registers**  
s 102 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Transitional—amounts to be paid**  
s 103 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Transitional—inspectors**  
s 104 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Transitional—chief executive officer**  
s 105 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Transitional regulations**  
s 106 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- Expiry—pt 11**  
s 107 exp 1 January 2012 (s 107 (1) (LA s 88 declaration applies))
- What is the *building and construction industry*?**  
sch 1 s 1.1 sub [A2013-49](#) s 43  
am [A2014-48](#) amdt 1.23; [A2017-21](#) amdt 1.31, amdt 1.32
- What is *building and construction work*?**  
sch 1 s 1.2 sub [A2013-49](#) s 43; [A2016-23](#) ss 8-10  
(3), (4) exp 1 July 2016 (s 1.2 (4))
- Recognised service—building and construction industry**  
sch 1 s 1.3 sub [A2013-49](#) s 43
- Service credit—building and construction industry—s 64**  
sch 1 s 1.4 sub [A2013-49](#) s 43  
am [A2019-44](#) s 36
- Service period—building and construction industry**  
sch 1 s 1.4A ins [A2013-49](#) s 43  
am [A2019-44](#) s 35, s 37
- Long service leave formula—building and construction industry**  
sch 1 s 1.5 am [A2012-9](#) s 33; [A2013-19](#) amdt 3.203  
sub [A2019-44](#) s 17
- Amount of leave—building and construction industry**  
sch 1 s 1.6 am [A2012-9](#) s 34; [A2020-11](#) amdt 1.48

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**Entitlement to payment instead of leave—building and construction industry**  
sch 1 s 1.8 am [A2012-9](#) ss 35-37; ss renum R7 LA; [A2020-11](#) amdt 1.49,  
amdt 1.50, ss renum R19 LA

**Payment for leave—building and construction industry**  
sch 1 s 1.9 am [A2012-9](#) s 38, s 39; [A2019-44](#) s 35

**How are leave payments worked out for the building and construction industry?**  
sch 1 s 1.11 am [A2013-49](#) s 44; [A2019-44](#) s 18, s 35

**Leave payments for service as registered employee—building and construction industry**  
sch 1 s 1.12 am [A2013-49](#) s 45

**Leave payments for service as registered voluntary member—building and construction industry**  
sch 1 s 1.13 hdg am [A2019-44](#) s 35  
sch 1 s 1.13 am [A2012-9](#) s 40; [A2019-44](#) s 19, s 35, s 36

**Payments by reciprocal authority on authority's behalf—building and construction industry**  
sch 1 s 1.15 am [A2013-49](#) s 45

**Service credit—building and construction industry—s 64**  
sch 1 s 1.16 om [A2013-49](#) s 46

**What is the *contract cleaning industry*?**  
sch 2 s 2.1 sub [A2013-49](#) s 47

**What is *cleaning work*?**  
sch 2 s 2.2 sub [A2013-49](#) s 47; [A2016-23](#) s 11

***Recognised service*—contract cleaning industry**  
sch 2 s 2.3 sub [A2013-49](#) s 47

**Service credit—contract cleaning industry—s 64**  
sch 2 s 2.4 sub [A2013-49](#) s 47  
am [A2019-44](#) s 36

**Service period—contract cleaning industry**  
sch 2 s 2.4A ins [A2013-49](#) s 47  
am [A2019-44](#) s 35, s 37

**Amount of leave—contract cleaning industry**  
sch 2 s 2.6 am [A2012-9](#) s 41; [A2020-11](#) amdt 1.51

**Entitlement to payment instead of leave—contract cleaning industry**  
sch 2 s 2.8 am [A2012-9](#) s 42; [A2020-11](#) amdt 1.52, amdt 1.53;  
ss renum R19 LA

**Payments for leave—contract cleaning industry**  
sch 2 s 2.9 am [A2012-9](#) s 43, s 44; [A2019-44](#) s 35



- How are leave payments worked out for the contract cleaning industry?**  
sch 2 s 2.11 am [A2013-49](#) s 48; [A2019-44](#) s 35
- Leave payments for service as registered employee—contract cleaning industry**  
sch 2 s 2.12 am [A2013-49](#) s 49; [A2019-44](#) s 20
- Leave payments for service as registered voluntary member—contract cleaning industry**  
sch 2 s 2.13 hdg am [A2019-44](#) s 35  
sch 2 s 2.13 am [A2012-9](#) s 45; [A2019-44](#) s 21, s 35, s 36
- Payments by reciprocal authority on authority's behalf—contract cleaning industry**  
sch 2 s 2.15 am [A2013-49](#) s 49
- Service credit—contract cleaning industry—s 64**  
sch 2 s 2.16 om [A2013-49](#) s 50
- Long service leave payments—community sector industry**  
sch 2A renum as sch 3
- Long service leave payments—community sector industry**  
sch 3 **orig sch 3**  
renum as sch 4  
**pres sch 3**  
(prev sch 2A) ins [A2009-42](#) s 9  
renum as sch 3 [A2009-42](#) s 14
- What is the *community sector industry*?**  
sch 3 s 3.1 sub [A2013-49](#) s 51  
am [A2015-50](#) amdt 3.121; [A2016-23](#) s 12, s 13; pars renum  
R14 LA; [A2019-44](#) s 22, s 23
- What is *community sector work*?**  
sch 3 s 3.2 sub [A2013-49](#) s 51  
am [A2016-23](#) s 14
- Recognised service—community sector industry**  
sch 3 s 3.3 sub [A2013-49](#) s 51
- Court or tribunal—not employer**  
sch 3 s 3.4 am [A2012-9](#) s 46
- Service credit—community sector industry—s 64**  
sch 3 s 3.5 sub [A2013-49](#) s 52  
am [A2019-44](#) s 24, s 25, s 36
- Service period—community sector industry**  
sch 3 s 3.5A ins [A2013-49](#) s 52  
am [A2019-44](#) s 35, s 37

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**Amount of leave—community sector industry**

sch 3 s 3.7 am [A2020-11](#) amdt 1.54

**Entitlement to payment instead of leave—community sector industry**

sch 3 s 3.9 am [A2012-9](#) s 47; [A2020-11](#) amdt 1.55, amdt 1.56; ss renum R19 LA

**Payments for leave—community sector industry**

sch 3 s 3.10 am [A2012-9](#) s 48, s 49; [A2019-44](#) s 35

**How are leave payments worked out for the community sector industry?**

sch 3 s 3.12 am [A2013-49](#) s 53; [A2019-44](#) s 35

**Leave payments for service as registered employee—community sector industry**

sch 3 s 3.13 am [A2013-49](#) s 54; [A2019-44](#) s 26

**Leave payments for service as registered voluntary member—community sector industry**

sch 3 s 3.14 hdg am [A2019-44](#) s 35

sch 3 s 3.14 am [A2012-9](#) s 50; [A2019-44](#) s 27, s 35, s 36

**Payments by reciprocal authority on authority's behalf—community sector industry**

sch 3 s 3.16 am [A2013-49](#) s 54

**Service credit—community sector industry—s 64**

sch 3 s 3.17 om [A2013-49](#) s 55

**Public holidays etc not to count as leave—community sector industry**

sch 3 s 3.19 am [A2011-28](#) amdt 3.158, amdt 3.159; [A2012-21](#) amdt 3.119 s 3.19 (4), (5) exp 21 September 2012 (s 3.19 (5))

**Long service leave payments—security industry**

sch 3A renum as sch 4

**Long service leave payments—security industry**

sch 4

**orig sch 4**

om LA s 89 (3)

**prev sch 4**

renum as sch 5

**pres sch 4**

(prev sch 3A) ins [A2012-22](#) s 7

renum as sch 4 [A2012-22](#) s 9

**What is the security industry?**

sch 4 s 4.1 sub [A2013-49](#) s 56

**What is security work?**

sch 4 s 4.2 sub [A2013-49](#) s 56

am [A2016-23](#) s 15

**Recognised service—security industry**sch 4 s 4.3 sub [A2013-49](#) s 56**Service credit—security industry—s 64**sch 4 s 4.5 hdg sub [A2016-23](#) s 16  
sch 4 s 4.5 sub [A2013-49](#) s 57  
am [A2019-44](#) s 28, s 36**Service period—security industry**sch 4 s 4.5A ins [A2013-49](#) s 57  
am [A2019-44](#) s 35, s 37**Amount of leave—security industry**sch 4 s 4.7 am [A2020-11](#) amdt 1.57**Entitlement to payment instead of leave—security industry**sch 4 s 4.9 am [A2020-11](#) amdt 1.58, amdt 1.59; ss renum R19 LA**Payments for leave—security industry**sch 4 s 4.10 am [A2019-44](#) s 35**How are payments worked out for the security industry?**sch 4 s 4.12 am [A2013-49](#) s 58; [A2019-44](#) s 29, s 35**Leave payments for service as registered employee—security industry**sch 4 s 4.13 am [A2013-49](#) s 59; [A2019-44](#) s 30**Leave payments for service as registered voluntary member—security industry**sch 4 s 4.14 hdg am [A2019-44](#) s 35  
sch 4 s 4.14 am [A2019-44](#) s 31, s 35, s 36**Payments by reciprocal authority on authority's behalf—security industry**sch 4 s 4.16 am [A2013-49](#) s 59**Service credit—security industry—s 64**sch 4 s 4.17 om [A2013-49](#) s 60**Reviewable decisions**sch 5 **orig sch 5**  
om LA s 89 (3)  
**prev sch 5**  
(prev sch 3) am [A2009-42](#) ss 10-13  
renum as sch 4 [A2009-42](#) s 14  
**pres sch 5**  
(prev sch 4) am [A2012-9](#) ss 51-54; [A2012-22](#) s 8; items renum  
R9 LA  
renum as sch 5 [A2012-22](#) s 9  
am [A2013-49](#) s 61; [A2019-44](#) s 32, s 35; items renum R18 LA

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### Dictionary

dict

am [A2011-22](#) amdt 1.299, amdt 1.300; [A2011-28](#) amdt 3.160; [A2016-52](#) amdt 1.134

def **apprentice** ins [A2012-9](#) s 55

def **at** premises sub [A2011-28](#) amdt 3.161

def **authority** sub [A2013-19](#) amdt 3.204

def **building and construction industry** am [A2013-49](#) s 62

def **community sector industry** ins [A2009-42](#) s 15  
am [A2013-49](#) s 63

def **community sector work** ins [A2009-42](#) s 15

def **contract cleaning industry** am [A2013-49](#) s 64

def **contractor** om [A2019-44](#) s 33

def **corresponding law** am [A2013-49](#) s 65

def **covered industry schedule** sub [A2009-42](#) s 16  
am [A2012-22](#) s 10

def **governing board** am [A2011-28](#) amdt 3.162

def **internally reviewable decision** ins [A2013-19](#) amdt 3.205

def **long service leave formula** sub [A2009-42](#) s 17  
am [A2012-22](#) s 11

def **occupier** ins [A2011-28](#) amdt 3.163

def **ordinary remuneration** sub [A2013-49](#) s 66

def **recognised service** sub [A2013-49](#) s 66; [A2015-50](#)  
amdt 3.122

def **school-based apprentice** ins [A2012-9](#) s 55

def **security industry** ins [A2012-22](#) s 12  
am [A2013-49](#) s 67

def **security work** ins [A2012-22](#) s 12

def **service period** sub [A2013-49](#) s 68; [A2015-50](#) amdt 3.123

def **voluntary member** ins [A2019-44](#) s 34

def **work** ins [A2015-50](#) amdt 3.124

def **working director** am [A2011-28](#) amdt 3.164; [A2012-9](#) s 56  
om [A2015-50](#) amdt 3.125

## 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 and date	Effective	Last amendment made by	Republication for
R1 1 Jan 2010	1 Jan 2010– 30 June 2010	<a href="#">A2009-42</a>	new Act
R2 1 July 2010	1 July 2010– 30 June 2011	<a href="#">A2009-42</a>	amendments by <a href="#">A2009-42</a>
R3 1 July 2011	1 July 2011– 20 Sept 2011	<a href="#">A2011-22</a>	amendments by <a href="#">A2011-22</a>
R4 21 Sept 2011	21 Sept 2011– 1 Jan 2012	<a href="#">A2011-28</a>	amendments by <a href="#">A2011-28</a>
R5 2 Jan 2012	2 Jan 2012– 4 June 2012	<a href="#">A2011-28</a>	expiry of transitional provisions (pt 11)
R6 5 June 2012	5 June 2012– 30 June 2012	<a href="#">A2012-21</a>	amendments by <a href="#">A2012-21</a>
R7 1 July 2012	1 July 2012– 21 Sept 2012	<a href="#">A2012-21</a>	amendments by <a href="#">A2012-9</a>
R8 22 Sept 2012	22 Sept 2012– 22 Nov 2012	<a href="#">A2012-21</a>	expiry of provision (sch 3, s 3.19 (4), (5))
R9 23 Nov 2012	23 Nov 2012– 13 June 2013	<a href="#">A2012-22</a>	amendments by <a href="#">A2012-22</a>
R10 14 June 2013	14 June 2013– 31 Dec 2013	<a href="#">A2013-19</a>	amendments by <a href="#">A2013-19</a>
R11 1 Jan 2014	1 Jan 2014– 19 Nov 2014	<a href="#">A2013-49</a>	amendments by <a href="#">A2013-49</a>

## Endnotes

### 6 Expired transitional or validating provisions

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Republication No and date	Effective	Last amendment made by	Republication for
R12 20 Nov 2014	20 Nov 2014– 8 Dec 2015	<a href="#">A2014-48</a>	amendments by <a href="#">A2014-48</a>
R13 9 Dec 2015	9 Dec 2015– 30 June 2016	<a href="#">A2015-50</a>	amendments by <a href="#">A2015-50</a>
R14 1 July 2016	1 July 2016– 1 July 2016	<a href="#">A2016-23</a>	amendments by <a href="#">A2016-23</a>
R15 2 July 2016	2 July 2016– 31 Aug 2016	<a href="#">A2016-23</a>	expiry of provision (sch 1, s 1.2 (3), (4))
R16 1 Sept 2016	1 Sept 2016– 14 Aug 2017	<a href="#">A2016-52</a>	amendments by <a href="#">A2016-52</a>
R17 15 Aug 2017	15 Aug 2017– 31 Dec 2019	<a href="#">A2017-21</a>	amendments by <a href="#">A2017-21</a>
R18 1 Jan 2020	1 Jan 2020– 7 Apr 2020	<a href="#">A2019-44</a>	amendments by <a href="#">A2019-44</a>

## 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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