



AUSTRALIAN CAPITAL TERRITORY

# Long Service Leave (Cleaning, Building and Property Services) Act 1999

No. 85 of 1999

## TABLE OF PROVISIONS

Section

### PART 1—PRELIMINARY

- |   |                            |
|---|----------------------------|
| 1 | Short title                |
| 2 | Commencement               |
| 3 | Interpretation             |
| 4 | Work outside the Territory |

### PART 2—ADMINISTRATION

#### *Division 1—The board*

- |    |  |
|----|--|
| 5  | Cleaning Industry Long Service Leave Board |
| 6  | Independence                               |
| 7  | Functions                                  |
| 8  | Powers                                     |
| 9  | Delegation                                 |
| 10 | Constitution                               |
| 11 | Acting members                             |
| 12 | Resignation                                |
| 13 | Termination of appointment                 |
| 14 | Meetings                                   |
| 15 | Disclosure of interest                     |
| 16 | Minister may require information           |

**TABLE OF PROVISIONS—continued**

Section	
17	Protection of members
18	Staff
	<i>Division 2—The registrar and inspectors</i>
19	Long Service Leave Registrar
20	Deputy Long Service Leave Registrar
21	Inspectors
22	Identity cards
23	Powers of inspectors
	<i>Division 3—Finances</i>
24	Money of the board
25	Application of money
26	Borrowing by the board
27	Contracts
28	Triennial investigation by the actuary
	<b>PART 3—REGISTRATION OF EMPLOYERS</b>
29	Employers register
30	Application for registration by employer
31	Employer registration
32	Certificate of registration
33	Change of address to be notified
	<b>PART 4—REGISTRATION OF EMPLOYEES</b>
34	Employees register
35	Application for registration by employee
36	Application by employer for registration of employee
37	Employee registration
38	Appeal against refusal to register
	<b>PART 5—PERIODIC NOTICES AND PAYMENTS</b>
39	Periodic notices and payments by employers
40	Failure to make periodic payment
41	Exemption from payments for working directors
42	Employers to keep records
	<b>PART 6—ENTRIES IN THE EMPLOYEES REGISTER</b>
43	Particulars in the employees register
44	Decision of ordinary pay by the board
45	Service credits
46	Removing names from employees register
	<b>PART 7—ANNUAL CERTIFICATES</b>
47	Annual certificates for employees
48	Annual certificates for employers
49	Objection to matter stated in annual certificate

**TABLE OF PROVISIONS—continued**

Section	
	<b>PART 8—LONG SERVICE LEAVE AND PAYMENTS</b>
50	Years of service
51	Long service leave formula
52	Amount of leave
53	Grant of leave
54	Entitlement to payment instead of leave
55	Payment for leave
56	Payment instead of leave
57	Amount of payment
58	Records of payment and service
59	Public holidays to count as leave
	<b>PART 9—MISCELLANEOUS</b>
60	Review of decisions of board and registrar
61	Notification of decisions
62	Evidentiary certificates
63	Inspection of register
64	Benefits under Long Service Leave Act
65	Regulations
	<b>PART 10—TRANSITIONAL</b>
66	Application for registration by employer
67	Periodic notices and payments by employers
68	Service credits for first year
	<b>PART 11—CONSEQUENTIAL AMENDMENTS</b>
69	Amendment of the Long Service Leave Act
70	Amendment of the Workers' Compensation Act



AUSTRALIAN CAPITAL TERRITORY

# Long Service Leave (Cleaning, Building and Property Services) Act 1999

No. 85 of 1999

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## An Act to provide for long service leave for employees in the cleaning, building and property services industry and for related purposes

*[Notified in ACT Gazette S65: 23 December 1999]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### PART 1—PRELIMINARY

#### 1 Short title

This Act may be cited as the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*.

#### 2 Commencement

(1) This Part and Part 2 commence on the day this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day or days fixed by the Minister by notice in the *Gazette*.

(3) However, if a provision has not commenced within 6 months after the day mentioned in subsection (1), it commences on the first day after that period.

### **3 Interpretation**

In this Act—

***agreement*** includes an industrial agreement made in accordance with the *Workplace Relations Act 1996* of the Commonwealth.

***award*** means an award made under the *Workplace Relations Act 1996* of the Commonwealth or a determination.

***award holiday*** means a day that is a holiday for people employed in the cleaning industry because of an award or agreement.

***board*** means the Cleaning Industry Long Service Leave Board established by section 5.

***cleaning industry*** means the industry of cleaning work.

***cleaning work*** means work with a rate of pay fixed by the Cleaning (Building and Property Services) (ACT) Award 1998 as amended, that is carried out in the Territory.

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

***deputy registrar*** means the Deputy Long Service Leave Registrar under section 20.

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

***employee*** means a person employed to carry out cleaning work (other than by the Territory, the Commonwealth, the Australian National University or the University of Canberra).

***employees register*** means the Long Service Leave (Cleaning, Building and Property Services) Register of Employees under section 34.

***employer*** means a person (other than the Territory, the Commonwealth, the Australian National University or the University of Canberra) who employs a person to carry out cleaning work.

***employers register*** means the Long Service Leave (Cleaning, Building and Property Services) Register of Employers under section 29.

***long service leave formula*** means the formula in section 51.

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

**ordinary pay** means—

- (a) for a working director—the greater of the following:
  - (i) the amount paid or payable to the working director for carrying out cleaning work (other than for reimbursement of costs or materials);
  - (ii) the minimum salary or wages payable under an award for a working director carrying out that cleaning work; or
- (b) for any other employee—the amount paid or payable to the employee for carrying out cleaning work, that is the total of—
  - (i) the salary or wages paid or payable for that work; and
  - (ii) the allowances paid or payable for that work for skill or qualifications; and
  - (iii) the amounts paid or payable for that work under a bonus or incentive scheme, that are amounts usually paid to the employee with his or her salary or wages (other than an amount for overtime or travelling costs or an extra payment for recreation leave).

**recognised service**, for a registered employee, means a period of service entered in the employees register for that employee.

**registered** means registered under this Act.

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

**registrar** means the Long Service Leave Registrar under section 19.

**salary or wages** does not include—

- (a) payments for overtime; or
- (b) payments at penalty rates of pay; or
- (c) allowances which, because of an award or agreement, are not taken into account in deciding a rate of pay for overtime.

**service** means service in the cleaning industry.

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

**working director** means the director of a company employed by it to carry out cleaning work where the only other employees of the company (if any) are directors.

#### **4 Work outside the Territory**

Work carried out by an employee outside the Territory is taken to be cleaning work if—

- (a) that work would, if it were carried out in the Territory, be cleaning work; and
- (b) the employer of that employee pays to the board the prescribed amount under section 39 for the ordinary pay paid or payable to the employee for that work.

## **PART 2—ADMINISTRATION**

### *Division 1—The board*

#### **5 Cleaning Industry Long Service Leave Board**

- (1) The Cleaning Industry Long Service Leave Board is established.
- (2) The board is a body corporate and is to have a common seal.

#### **6 Independence**

The board is not, and is not to be taken to be, the employee or agent of the Territory.

#### **7 Functions**

The board's functions are—

- (a) to administer the scheme of long service benefits established by this Act for employees engaged in the cleaning industry; and
- (b) to make recommendations to the Minister for changes the board considers should be made to the rate of payments made by employers under this Act; and
- (c) to make payments in accordance with this Act; and
- (d) to establish and maintain the employers register and the employees register in accordance with this Act.

## **8 Powers**

(1) The board may do everything necessary and convenient to be done for the performance of its functions and, for example, may—

- (a) take action to recover money payable to the board and debts incurred against the board; and
- (b) enter into agreements for borrowing money in accordance with this Act; and
- (c) incur legal and other costs in proceedings by or against the board; and
- (d) refund money that is refundable under this Act.

(2) Without limiting subsection (1), the board has the same capacity as a natural person.

## **9 Delegation**

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

## **10 Constitution**

(1) The board consists of the following members:

- (a) the Chairperson;
- (b) a member representing employer organisations;
- (c) a member representing employee organisations.

(2) The members of the board are to—

- (a) be appointed by the Minister; and
- (b) hold office for up to 5 years, as stated in the member's appointment; and
- (c) be eligible for reappointment.

(3) The performance of the functions and the exercise of the powers of the board are not affected only because there is a vacancy in the membership of the board.

## **11 Acting members**

(1) The Minister may appoint a person to act as a member for up to 1 year during—

- (a) a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or

- (b) any period, or during all periods, when a member is absent from duty or from the Territory or is unable to carry out the functions of the office.
- (2) The Minister may end the appointment of an acting member.
- (3) The validity of anything done by a person purporting to act under this section is not to be called in question on any of the following grounds:
  - (a) the occasion for the appointment had not arisen;
  - (b) there was a defect in the appointment;
  - (c) the appointment had ended;
  - (d) the occasion for him or her to act had not arisen or had ended.

## **12 Resignation**

- (1) A member of the board may resign from office by written notice, signed and given to the Minister.
- (2) The resignation takes effect on the day the notice is given to the Minister or, if a later date is stated in the notice, that later date.

## **13 Termination of appointment**

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

## **14 Meetings**

- (1) The chairperson is to call a meeting of the board when the chairperson considers it is necessary for the performance of the board's functions.
- (2) At a meeting of the board, 2 members form a quorum.

- (3) The chairperson is the presiding member at all meetings of the board at which he or she is present.
- (4) If the chairperson is not present at a meeting of the board, the members present must choose 1 of the 2 to preside at the meeting.
- (5) A question at a meeting of the board is decided by a majority of the votes of the members present and voting.
- (6) The person presiding at a meeting of the board has a deliberative vote and has, if there is an equality of votes, a casting vote.
- (7) If only 2 members are present at a meeting of the board and they differ on a question to be decided at the meeting, the question is delayed until the next meeting at which more than 2 members are present.

#### **15 Disclosure of interest**

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

Penalty: 20 penalty units.

- (2) If a direct or indirect financial interest is disclosed at a meeting, the member presiding must record the disclosure in the minutes of the meeting.
- (3) A member disclosing an interest must not, unless the Minister or the board otherwise decides—
  - (a) be present during a deliberation of the board about that matter; or
  - (b) take part in a decision of the board about that matter.
- (4) If the board is to make a decision under subsection (3), any member who has a direct or indirect financial interest in the matter to which the disclosure relates must not—
  - (a) be present during a deliberation of the board about the decision; or
  - (b) take part in making the decision.
- (5) The Minister must end the appointment of a member who fails, without reasonable excuse, to comply with this section.

#### **16 Minister may require information**

The board must, if required by the Minister, give the Minister any information relating to the exercise of its powers and the performance of its functions.

## **17 Protection of members**

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

## **18 Staff**

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

### *Division 2—The registrar and inspectors*

## **19 Long Service Leave Registrar**

- (1) There is to be a Long Service Leave Registrar.
- (2) The registrar has the functions conferred by this Act or as the board directs.
- (3) The chief executive must create and maintain an office in the government service for which the duties include carrying out the functions of the registrar.
- (4) The registrar is to be the public servant for the time being carrying out the duties of the government service office mentioned in subsection (3).

## **20 Deputy Long Service Leave Registrar**

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

## **21 Inspectors**

- (1) The registrar may appoint any inspectors that the registrar considers necessary under this Act.

(2) The registrar must only appoint a person who is a public servant to be an inspector.

(3) An inspector must carry out the duties under this Act that the registrar directs.

## **22 Identity cards**

(1) The Minister must give an inspector an identity card stating the name and appointment of the inspector and on which appears a recent photograph of the inspector.

(2) A person must not, on ceasing to be an inspector, fail or refuse without reasonable excuse to return the identity card.

Penalty: 1 penalty unit.

## **23 Powers of inspectors**

(1) An inspector may, at any reasonable time, enter the premises of a person the inspector reasonably believes is an employer, and—

- (a) inspect records, books or documents that are required by this Act to be kept by an employer; and
- (b) require a person at the premises to give the inspector—
  - (i) information within the person's knowledge relating to the rights and duties under this Act of the employer or an employee of the employer; and
  - (ii) any records, books or documents required by this Act to be kept by an employer that are in the person's possession or that the person has access to.

(2) If an inspector enters premises under subsection (1) and does not produce his or her identity card on request of the occupier or person in charge of the premises—

- (a) the inspector is not authorised to remain on the premises; and
- (b) a person is not required to comply with a requirement made by the inspector under paragraph (1) (b).

(3) An inspector may, by written notice given to an employer, require the employer to produce to the board, within 14 days after the day on which the notice was given, any information, records, books, or documents mentioned in paragraph (1) (b) that are stated in the notice.

(4) The notice may be served on an employer—

- (a) if the employer is a body corporate—by leaving it at the employer's registered office; or

- (b) if the employer is a natural person—
  - (i) by delivering it to the employer personally; or
  - (ii) by leaving it at the last-known place of residence or business of the employer with a person who is, or is reasonably believed to be, both over the age of 16 years and residing or employed at that place.
- (5) A person must not, without reasonable excuse, fail to comply with a requirement of an inspector under this section.

Penalty:

- (a) for a natural person—50 penalty units;
- (b) for a body corporate—250 penalty units.

### ***Division 3—Finances***

#### **24 Money of the board**

The money of the board consists of—

- (a) money received by the board under section 39; and
- (b) income derived from the investment of money of the board; and
- (c) money borrowed by the board; and
- (d) any other money paid to the board under this Act.

#### **25 Application of money**

The money of the board must be applied only—

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

#### **26 Borrowing by the board**

- (1) The board may borrow money in amounts, and on terms, approved by the Minister.
- (2) The board may give security over the whole or part of its assets for the repayment of money borrowed under this section and the payment of interest on that money.
- (3) The board must not borrow money other than in accordance with this section.

## **27 Contracts**

(1) The board must not, except with the approval of the Minister, enter into a contract for the payment or receipt by the board of an amount greater than \$250,000.

(2) Subsection (1) does not apply to a contract for the investment of money entered into in accordance with section 56 of the *Financial Management Act 1996*.

## **28 Triennial investigation by the actuary**

(1) The Treasurer must, in writing, appoint an actuary.

(2) The actuary must conduct an investigation of the state and sufficiency of the money of the board—

(a) when requested by the board; and

(b) in any event, within 3 years after the commencement of this Act and at the end of each following period of 3 years.

(3) The actuary must report to the board the result of the investigation and must state whether, in the actuary's opinion, any reduction or increase is necessary in the rates of periodic payments payable to the board by employers under this Act.

(4) The actuary must forward to the Minister a copy of each report made under this section.

## **PART 3—REGISTRATION OF EMPLOYERS**

### **29 Employers register**

The board must establish and maintain a register called the *Long Service Leave (Cleaning, Building and Property Services) Register of Employers*.

### **30 Application for registration by employer**

(1) An employer must apply to the registrar for registration.

Penalty: 50 penalty units.

(2) The application must—

(a) be in writing; and

(b) be signed by the applicant; and

- (c) contain particulars of—
- (i) the name of the applicant, the address of the principal place of business of the applicant and, if the applicant is a body corporate, the address of its registered office; and
  - (ii) the nature of the work in which the applicant is engaged as an employer; and
  - (iii) the names of all people who are employees of the applicant; and
  - (iv) the award under which each employee is employed; and
  - (v) any other matters that are prescribed.
- (3) The application must be given to the registrar within 1 month after the applicant becomes an employer or within any additional time that the registrar allows.

### **31 Employer registration**

- (1) If the registrar is satisfied that an applicant under section 30 is an employer, the registrar must register the applicant by entering in the employers register—
- (a) the name and address of the applicant; and
  - (b) the date on which the registration takes effect; and
  - (c) any other particulars that the board considers appropriate.
- (2) The registration of an applicant takes effect from the date on which the application was given to the registrar.

### **32 Certificate of registration**

- (1) The registrar must give a certificate of registration, signed by the registrar, to the registered employer.
- (2) The certificate is evidence that the person was a registered employer on the date stated in the certificate.

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

If a registered employer changes address he or she must, within 1 month of the change, notify the registrar in writing of the new address.

Penalty: 5 penalty units.

#### **PART 4—REGISTRATION OF EMPLOYEES**

##### **34 Employees register**

The board is to establish and maintain a register called the *Long Service Leave (Cleaning, Building and Property Services) Register of Employees*.

##### **35 Application for registration by employee**

- (1) An employee must apply to the registrar for registration.
- (2) The application must—
  - (a) be in writing; and
  - (b) be signed by the applicant; and
  - (c) contain particulars of—
    - (i) the name and residential address of the applicant and his or her date of birth; and
    - (ii) the nature of the cleaning work carried out by the applicant, the date on which he or she commenced his or her current employment in that work, and the award or agreement under which he or she is employed; and
    - (iii) the name and address of the principal place of business of the applicant's employer or, if the employer is a body corporate, the address of its registered office; and
    - (iv) any other matters that are prescribed.
- (3) The application must be given to the registrar within 1 month after the applicant becomes an employee or within any additional time that the registrar allows.

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

- (1) An employer must apply to the registrar for registration of an employee if the employee—
  - (a) is not registered; and
  - (b) has not applied for registration under section 35 within 3 months after the employee began cleaning work.
- (2) The application must—
  - (a) be in writing; and
  - (b) be signed by the applicant; and

- (c) contain particulars of—
- (i) the name of the applicant; and
  - (ii) the address of the principal place of business of the applicant or, if the applicant is a body corporate, the address of its registered office; and
  - (iii) the name and address of the employee and his or her date of birth; and
  - (iv) the nature of the work carried out by the employee and the date on which he or she commenced his or her employment with the applicant; and
  - (v) any other matters that are prescribed.
- (3) The application must be given to the registrar within 4 months after the employee becomes an employee or within any additional time that the registrar allows.

### **37 Employee registration**

- (1) If the registrar is satisfied that a person to whom an application under section 35 or 36 relates is an employee, the registrar must register the person by entering in the employees register—
- (a) the name and address of the employee and his or her date of birth; and
  - (b) the name of the employer of the employee; and
  - (c) the address of the principal place of business of the employer of the person and, if the employer is a body corporate, the address of its registered office; and
  - (d) the date on which the registration takes effect; and
  - (e) any other particulars that the board considers appropriate.
- (2) The registration of an employee takes effect from the date on which the application was given to the registrar.

### **38 Appeal against refusal to register**

- (1) If the registrar refuses the application, the registrar must, within 7 days after making that decision, give the applicant written notice of the decision and the supporting reasons.
- (2) If the registrar refuses the application, the applicant may apply to the board for a review of the decision.

- (3) After reviewing the decision, the board may—
  - (a) confirm the decision of the registrar; or
  - (b) order that the applicant, or the person for whom the application is made, be registered.
- (4) The board must, within 7 days after making a decision under paragraph (3) (a) or (b), give the applicant a written statement setting out its decision and the supporting reasons.
- (5) A notice under subsection (1), and a statement under subsection (4), may be given to an applicant by post addressed to the applicant at his or her address set out in the application.

## **PART 5—PERIODIC NOTICES AND PAYMENTS**

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

- (1) An employer must, at the end of each 2 month period after becoming an employer, by the due date—
  - (a) give to the board a notice for that period; and
  - (b) pay to the board 2% of the total ordinary pay paid or payable by the employer to his or her employees during that period.

Penalty: 20 penalty units.

- (2) The due date is—
  - (a) 15 days after the end of the period; or
  - (b) any later date allowed by the registrar.
- (3) The notice must—
  - (a) be in writing; and
  - (b) be signed by the employer; and
  - (c) contain a statement certifying that each of the employees stated in the notice carried out cleaning work during the period to which the notice relates; and
  - (d) state—
    - (i) the name and address of the employer; and
    - (ii) the name of each registered employee who carried out cleaning work or who was absent on paid leave during the period to which the notice relates; and

- (iii) the days, or parts of days, on which each of those employees carried out that work or was absent on paid leave; and
- (iv) the amount of ordinary pay paid or payable by the employer to each of those employees during that period; and
- (v) any other matters that are prescribed.

(4) If a person is convicted of an offence against subsection (1) a court may, in addition to imposing a penalty under that subsection, order the person to pay the board the amount for the period in respect of which the offence was committed.

(5) If a court has made an order under subsection (4), a certificate signed by the appropriate officer of the court stating the amount to be paid and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of the amount, and the certificate is then enforceable in all respects as a final judgment of the court in which it is filed.

#### **40 Failure to make periodic payment**

(1) If an employer fails to pay to the board the amount for a period by the due date, the employer is liable to pay to the board (in addition to the amount) the greater of the following amounts:

- (a) interest on the amount at the rate of 2.5% of the amount for each month or part of a month after the due date in which the amount is unpaid;
- (b) \$50 for each month or part of a month after the due date in which the amount is unpaid.

(2) The registrar may, on the application of the employer or of the registrar's own initiative, remit part or all of an additional amount payable under subsection (1) if satisfied that—

- (a) the circumstances that gave rise to the contravention were not caused directly or indirectly by the employer; or
- (b) because of special circumstances, it would be fair and reasonable to remit part or all of that amount.

#### **41 Exemption from payments for working directors**

(1) The board must, on application, grant the employer of a working director an exemption from payment of an amount payable under paragraph 39 (1) (b) for cleaning work carried out by the working director.

- (2) The application must be in a form approved by the registrar.
- (3) The exemption is in force until whichever of the following first occurs:
  - (a) the working director ceases to be a working director other than because he or she ceases to carry out cleaning work;
  - (b) the working director notifies the board in writing that he or she no longer wishes the exemption to apply to him or her.
- (4) The working director is taken not to be an employee under this Act while the exemption is in force.

#### **42 Employers to keep records**

- (1) An employer must, for each employee employed by him or her, keep a record showing particulars of—
  - (a) the name of the employee and his or her date of birth; and
  - (b) the nature of the cleaning work carried out by the employee; and
  - (c) the ordinary pay of the employee; and
  - (d) the number of days worked in each period of 2 months by the employee; and
  - (e) the date on which the employee commenced service with the employer; and
  - (f) long service leave granted, or payment instead of leave made, to the employee; and
  - (g) if the employee ceases to be employed by the employer—the date on which he or she ceased employment.

Penalty: 20 penalty units.

- (2) The employer must keep the record for 6 years after the date the employee ceases employment in the cleaning industry with the employer.

Penalty: 20 penalty units.

### **PART 6—ENTRIES IN THE EMPLOYEES REGISTER**

#### **43 Particulars in the employees register**

The board must enter and maintain in the employees register the following particulars for each registered employee:

- (a) the number of days' service with which the employee is credited under this Act;

- (b) the ordinary pay of the employee for cleaning work carried out by the employee;
- (c) the employee's entitlement to long service leave;
- (d) long service leave granted to or taken by, or payment instead of long service leave made to the employee (whether under this Act or the *Long Service Leave Act 1976*);
- (e) if an employee has ceased to be employed or has ceased work in the cleaning industry—the date on which he or she ceased employment or ceased work;
- (f) any other matters that the board considers appropriate.

#### **44 Decision of ordinary pay by the board**

**(1)** If—

- (a) a notice is given to the board under section 39; and
- (b) the board is of the opinion that the amount of ordinary pay stated in the notice is insufficient or excessive because of the nature of the work carried out by the employee;

the board must give a written notice to the employer and the employee summarising the employer's and employee's rights under subsection (2).

**(2)** The employer or employee may—

- (a) within 1 month of the date of the notice, give a written statement to the board about any matters that he or she wishes the board to take into consideration about the matter; and
- (b) appear before the board, either in person or by a person acting on his or her behalf, to make representations to the board about the matter.

**(3)** If, after considering any statement and representations made under subsection (2), the board is of the opinion that the amount of ordinary pay is insufficient or excessive because of the nature of the work carried out by the employee, the board may fix an amount as the ordinary pay of the employee instead of the amount stated in the notice and must enter that amount in the employees register accordingly.

**(4)** The amount fixed by the board is to be treated for this Act as the ordinary pay of the employee.

(5) If the amount fixed by the board is greater than the amount stated in the notice given to the board under section 39, the employer must pay to the board the difference between the amount paid by him or her and the amount that would have been payable if the ordinary pay of the employee had been the amount fixed by the board.

(6) If the amount fixed by the board is less than the amount stated in the notice given to the board under section 39, the board must pay to the employer the difference between the amount paid by him or her and the amount that would have been payable if the ordinary pay had been the amount fixed by the board.

#### **45 Service credits**

(1) A registered employee is to be credited in the employees register with 1 day's service for each whole or part of a working day the employee carries out cleaning work.

(2) A registered employee is to be credited in the employees register with 1 day's service for each whole or part of a working day the employee is absent from cleaning work—

- (a) on annual leave if the employee—
  - (i) has taken 4 weeks annual leave in a year; and
  - (ii) is, or is entitled to be, paid ordinary pay by his or her employer for all of that annual leave; or
- (b) on long service leave; or
- (c) attending a court in accordance with a summons to serve as a juror in proceedings before the court; or
- (d) attending a court in accordance with a subpoena to give evidence in proceedings before the court; or
- (e) on paid leave granted by his or her employer (other than annual leave or leave mentioned in paragraph (g)); or
- (f) because of incapacity due to an injury for which the employee is entitled to compensation under the *Workers' Compensation Act 1951* (up to 110 days per year); or
- (g) and a registered medical practitioner certifies that in his or her opinion the employee is unable to work because of illness or injury and the employee is, or is entitled to be, paid ordinary pay by his or her employer (from 10 to 110 days per year); or

(h) because the work has been interrupted or ended by his or her employer with the intention of avoiding granting long service leave to the employee.

(3) A registered employee must not be credited with more than 220 days service per financial year in addition to the number of days credited for annual leave for that year under paragraph (2) (a).

(4) A registered employee must not be credited under paragraph (2) (h) with more than 4 years service for any 1 period mentioned in that paragraph.

(5) If—

- (a) a registered employee is credited with less than 10 years recognised service; and
- (b) he or she has ceased work in the cleaning industry, for a reason other than total incapacity, with the intention of leaving the industry permanently; and
- (c) payment for the period of recognised service has been made to the employee under this Act;

the employee must not be credited in the employees register with any period of service during the period of 1 year beginning on the date on which the application for that payment was made.

(6) An employee must not be credited with a period of service unless his or her employer has made payment to the board in accordance with section 39 for the period of service.

(7) The registrar is to credit a registered employee in the employees register with a period of service if—

- (a) the employee's employer is registered; and
- (b) the employer has ceased to employ any person to carry out cleaning work; and
- (c) the employee was employed by the employer during the period of service; and
- (d) the employer has not made payment to the board in accordance with section 39 for the period of service; and
- (e) the registrar is satisfied that the employee would, but for the employer's failure to make the payment, be entitled to be credited in the employees register with the period of service.

**46 Removing names from employees register**

- (1) The board must remove the name of a registered employee from the employees register if the employee has not been credited with any period of service in that register for a period of 4 years or more.
- (2) If the name of the registered employee is removed from the employees register—
  - (a) the employee ceases to be registered on the date on which his or her name is removed; and
  - (b) subject to subsection (3), the employee is not entitled to apply for or be paid any amount for, or instead of, long service leave for any period of service entered in that register before the date on which the registration ceased.
- (3) The board must not remove the name of a registered employee from the employees register if the employee ceases to carry out cleaning work and has notified the board that he or she is otherwise employed or engaged in work in the cleaning industry, until whichever of the following first occurs:
  - (a) the employee applies to the board for payment of the total amount for or instead of long service leave;
  - (b) the employee's employer makes an application under subsection 64 (4) for payment of the total amount to which the employer is entitled under subsection 64 (5);
  - (c) in the case of a working director—the working director requests the board to remove his or her name from that register;
  - (d) the period of 10 years commencing on the date on which the employee ceased to carry out cleaning work expires.
- (4) A notification under paragraph (3) (c) must state—
  - (a) the date on which the registered employee became otherwise employed or engaged in work in the cleaning industry; and
  - (b) the name and address of the principal place of business of his or her employer (if any), or if the employer is a body corporate, the address of its registered office.
- (5) An employee is entitled to apply for and be paid an amount instead of long service leave for any period of service entered in the employees register before the date on which his or her registration ceased if the employee would, but for his or her ceasing to be registered, have been entitled to payment for that period under section 54.

(6) Nothing in this section prevents a person whose name has been removed from the employees register from applying to the board for registration under this Act.

## **PART 7—ANNUAL CERTIFICATES**

### **47 Annual certificates for employees**

The registrar must, as soon as practicable after 31 July and before 1 November each year, give to each registered employee a certificate stating—

- (a) the total number of days' service the employee has been credited with in the employees register (from the date of registration to the end of the previous financial year); and
- (b) the number of days' service the employee has been credited with for the previous financial year.

### **48 Annual certificates for employers**

The registrar must, as soon as practicable after 31 July and before 1 November each year, give to each registered employer a certificate stating—

- (a) the name recorded in the employees register of each employee of the employer during the previous financial year; and
- (b) the total number of days' service each employee of the employer has been credited with in the employees register (from the date of registration to the end of the previous financial year); and
- (c) the number of days' service each employee of the employer has been credited with for the previous financial year; and
- (d) the total of the amount paid by the employer to the board in accordance with section 39 during the previous financial year.

### **49 Objection to matter stated in annual certificate**

(1) An employee or employer who is sent a certificate under section 47 or 48 may, within 6 months after the date of the certificate, make an objection in writing to the board about the accuracy of a matter stated in the certificate.

(2) If an objection is made to the board, the board must decide the objection and must, if it allows the objection—

- (a) make any necessary correction in the employees register; and
- (b) give an amended certificate to the person who made the objection.

## **PART 8—LONG SERVICE LEAVE AND PAYMENTS**

### **50 Years of service**

A registered employee is taken to have completed a year of recognised service for each 220 days' recognised service.

### **51 Long service leave formula**

(1) The following formula is the long service leave formula:

(2) In this section—

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

**W** means the number of weeks long service leave.

### **52 Amount of leave**

(1) A registered employee who has 10 years or more recognised service is entitled to the number of weeks long service leave calculated in accordance with the long service leave formula.

(2) A registered employee who is entitled to long service leave under this Act and who is credited with additional service in the employees register after the date on which he or she became entitled to the long service leave is entitled to long service leave for the additional service calculated in accordance with the long service leave formula.

### **53 Grant of leave**

(1) An employer must grant a registered employee's long service leave within 6 months after the leave has accrued unless—

- (a) the board allows an additional period (on application made by the employer or the employee); or
- (b) the employer and employee agree on an additional period.

Penalty: 50 penalty units.

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

(3) The employer must give the employee a written notice stating the date when the long service leave starts and the date when it ends.

(4) Unless the employee otherwise agrees, the notice must be given to the employee at least 2 months before the date in the notice when the long service leave starts.

Penalty: 50 penalty units.

#### **54 Entitlement to payment instead of leave**

(1) A registered employee to whom this section applies is entitled to payment instead of long service leave for the number of weeks long service leave calculated in accordance with the long service leave formula.

(2) This section applies to a registered employee who—

- (a) is credited with a period of recognised service of more than 54 days but less than 10 years; and
- (b) ceases work in the cleaning industry because of total incapacity, death or retirement with the intention of leaving the industry permanently.

(3) This section applies to a registered employee who—

- (a) is a working director; and
- (b) is credited with a period of recognised service of more than 5 years but less than 10 years; and
- (c) has requested the board in writing to remove his or her name from the employees register.

(4) This section applies to a registered employee who—

- (a) is not a working director; and
- (b) is credited with a period of recognised service of more than 5 years but less than 10 years; and
- (c) ceased work in the cleaning industry for a reason other than total incapacity, death or retirement with the intention of leaving the industry permanently; and
- (d) either—
  - (i) 20 weeks or more has expired since the employee has been credited with recognised service; or
  - (ii) the board is satisfied the employee intends to reside permanently in another country.

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

(1) A registered employee who has been granted long service leave under section 53 may apply to the board for payment for that leave.

- (2) An application must—
- (a) be in writing signed by the applicant; and
  - (b) be given to the board; and
  - (c) state the period of long service leave for which the payment is sought; and
  - (d) be accompanied by the notice mentioned in subsection 53 (3).
- (3) If, on receipt of an application, the board is satisfied that the applicant is entitled to long service leave, the board must pay to the applicant out of the money of the board an amount calculated in accordance with section 57.
- (4) The board must pay an applicant any amount payable under subsection (3) at least 7 days before the applicant becomes entitled to that long service leave if—
- (a) the application is made at least 14 days before the applicant becomes entitled to long service leave under this Act; and
  - (b) the applicant makes such a request in the application.

## **56 Payment instead of leave**

- (1) If a registered employee is entitled to payment instead of long service leave under this Act, the employee may apply to the board for payment accordingly.
- (2) An application under subsection (1) must—
- (a) be in writing signed by the applicant; and
  - (b) be given to the board; and
  - (c) in the case of an application by a registered employee who ceases work in the cleaning industry by reason of total incapacity—be accompanied by the certificate of a registered medical practitioner certifying that the employee is totally incapacitated for service in the cleaning industry.
- (3) The board may require an applicant mentioned in paragraph (2) (c) to submit himself or herself to a medical examination by a registered medical practitioner chosen by the board for that purpose from a panel of 3 registered medical practitioners 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 board.

(5) If an applicant refuses or fails, without reasonable excuse, to comply with a requirement of the board under subsection (3), the board may refuse the application.

(6) If an application is made under subsection (1) and the board is satisfied the applicant is entitled to payment instead of leave under this Act, the board must pay to the applicant out of the money of the board an amount calculated in accordance with section 57.

### **57 Amount of payment**

(1) The amount payable by the board to an employee under section 55 or 56 is to be calculated in accordance with the following formula:

(2) In this section—

**A** means the amount payable by the board to the applicant.

**assessment period** means a period for which a notice, stating the applicant is an employee, has been given to the registrar in accordance with section 39.

**DA** means the number of days in the relevant period—

- (a) when the applicant was absent from employment in the cleaning industry; and
- (b) when the applicant was paid (or was entitled to be paid) ordinary pay, or compensation under the *Workers' Compensation Act 1951*, by an employer in that industry; and
- (c) that are not credited to the applicant as service in the employees register.

**DS** means the number of days' service during the relevant period credited to the applicant in the employees register.

**PH** means the number of public holidays and award holidays during the relevant period.

**relevant period** means whichever of the following that results in the greater amount payable by the board to the applicant:

- (a) the 2 assessment periods most recently completed before the date on which the application is received by the board (whether or not those periods are consecutive);

- (b) the 12 month period ending at the end of the last assessment period before the date on which the application is received by the board.

**TP** means the total ordinary pay recorded in the employees register as received by the applicant during the relevant period.

**W** means the number of weeks long service leave for which the applicant has applied for payment (not greater than the number to which the applicant is entitled).

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

If the board pays an amount to a registered employee in accordance with section 55 or 56, the board may delete from the employees register the particulars relating to the period of service for which the employee has been paid, but must keep another record of—

- (a) the period of service; and
- (b) the amount paid to the employee 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 employee.

### **59 Public holidays to count as leave**

If a public holiday or an award holiday falls during a period of long service leave taken by a registered employee—

- (a) the public holiday or award holiday is taken to be part of the long service leave; and
- (b) the period of leave is not to be increased because of the holiday.

## **PART 9—MISCELLANEOUS**

### **60 Review of decisions of board and registrar**

(1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the board—

- (a) refusing to register an employer under section 31; or
- (b) confirming, under subsection 38 (4), a decision of the registrar to refuse an application for registration; or
- (c) refusing to allow an additional period under paragraph 39 (2) (b); or

- (d) that it is not satisfied that a person to whom a notice under subsection 41 (1) relates is a working director; or
  - (e) that the amount of ordinary pay stated in the notice is insufficient or excessive under section 44; or
  - (f) to allow, or not allow, an objection to matter stated in an annual certificate under subsection 49 (2); or
  - (g) allowing, or not allowing, an additional period mentioned in paragraph 53 (1) (a); or
  - (h) that it is not satisfied that an applicant is entitled to payment mentioned in subsection 54 (1); or
  - (i) refusing to make a payment under subsection 55 (3), 56 (6) or 64 (5).
- (2) Application may be made to the Administrative Appeals Tribunal for review of a decision by the registrar—
- (a) deciding, or refusing to decide, an additional period as mentioned in subsection 39 (1); or
  - (b) refusing to remit, in accordance with subsection 40 (2), part or all of an amount payable by the employer under subsection 40 (1); or
  - (c) refusing to credit an employee with a period of service under subsection 45 (7).

## **61 Notification of decisions**

- (1) If the board or the registrar makes a decision of a kind mentioned in section 60, the board or the registrar must give a written notice to the person whose interests are affected by the decision.
- (2) A notice under subsection (1) must be in accordance with the requirements of the code of practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

## **62 Evidentiary certificates**

In proceedings for an offence against subsection 39 (1), a certificate signed by the registrar to the effect of any of the following paragraphs is evidence of the matters stated in the certificate:

- (a) that an employer was required to give a notice in accordance with paragraph 39 (1) (a) on or before a date ascertained in accordance with subsection 39 (1) and stated in the certificate;

- (b) that an employer was required, in accordance with paragraph 39 (1) (b), to pay the prescribed amount for a period stated in the certificate on or before a date ascertained in accordance with subsection 39 (1) and stated in the certificate;
- (c) that the registrar did not allow an employer any additional period to give a notice in accordance with paragraph 39 (1) (a), or to pay an amount in accordance with paragraph 39 (1) (b);
- (d) that the registrar allowed an employer the additional period stated in the certificate to give a notice in accordance with paragraph 39 (1) (a), or to pay an amount in accordance with paragraph 39 (1) (b);
- (e) that an employer had or had not given a notice in accordance with paragraph 39 (1) (a) on or before a date stated in the certificate;
- (f) that an employer had or had not paid, in accordance with paragraph 39 (1) (b), an amount for a period stated in the certificate on or before a date stated in the certificate.

### **63 Inspection of register**

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

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

(1) A registered employee who is eligible for long service benefits under this Act and the *Long Service Leave Act 1976* or a prescribed law for service in the cleaning industry must elect whether to take the benefits provided under this Act or the *Long Service Leave Act 1976* or the prescribed law.

(2) The registered employee must notify the board in writing of the nature of his or her election and the period of service for which the election is made.

(3) If a registered employee elects to take long service benefits under the *Long Service Leave Act 1976* or a prescribed law, the board must remove from the employees register the employee's credits for that period of service.

(4) If an employer makes a payment in accordance with section 8 of the *Long Service Leave Act 1976* or in accordance with a prescribed law for, or instead of, long service leave to, or in relation to, a registered employee who has elected to take long service benefits under that Act or the prescribed law for a period of service in the cleaning industry, the employer may apply to the board for payment to him or her of the relevant amount.

(5) If an application is made to the board by an employer under subsection (4) and the board is satisfied the amount paid by the employer was properly paid in accordance with section 8 of the *Long Service Leave Act 1976* or in accordance with the prescribed law, the board must pay to the employer out of the money of the board the relevant amount less any amount outstanding that is payable by the employer to the board.

(6) The relevant amount is calculated in accordance with the following formula:

(7) In this section—

**A** means the number of working days from the date of commencement of this section to the date on which the employee became or becomes entitled to long service benefits under the *Long Service Leave Act 1976* or the prescribed law.

**B** means the number of working days in the period stated by the employee under subsection (2).

**RA** means the relevant amount.

## **65 Regulations**

The Executive may make regulations for the purposes of this Act.

## **PART 10—TRANSITIONAL**

### **66 Application for registration by employer**

(1) A person who was an employer immediately before the commencement of section 30 must apply to the registrar for registration within 3 months after the commencement of that section.

(2) This section expires 2 years after it commences.

**67 Periodic notices and payments by employers**

(1) A person who was an employer immediately before section 39 commences is taken to have first become an employer on the day on which that section commences.

(2) This section expires 2 years after it commences.

**68 Service credits for first year**

(1) A registered employee must not be credited in the employees register from the commencement of this section to the next 30 June with more days service than the relevant number calculated in accordance with the following formula:

(2) In this section—

**M** means the number of months from the commencement of this section to the next 30 June.

**RN** means the relevant number.

(3) This section expires 2 years after it commences.

**PART 11—CONSEQUENTIAL AMENDMENTS**

**69 Amendment of the Long Service Leave Act**

Section 2 of the *Long Service Leave Act 1976* is amended by inserting after subsection (2A) the following subsection:

“(2B) An employee who—

(a) is registered under the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*; and

(b) has elected under section 64 of that Act to take long service benefits under that Act in respect of a period stated by the employee;

is entitled to receive benefits under this Act if, had a benefit not been received by the employee under the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*, the employee would have been entitled to receive benefits under this Act in respect of the same period.”.

**70 Amendment of the Workers' Compensation Act**

Section 16 of the *Workers' Compensation Act 1951* is amended by adding at the end of paragraph (4) (h) “or the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*”.

*Long Service Leave (Cleaning, Building and Property Services) No. 85, 1999*

**NOTE**

**Penalty units**

See section 33AA of the *Interpretation Act 1967*.

*[Presentation speech made in Assembly on 30 June 1999]*

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