



Australian Capital Territory

Long Service Leave (Cleaning, Building and Property Services) Amendment Act 2001

2001 No 92

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Act amended	2
4 Long title	2
5 Sections 1 and 3	2
6 Work outside the Territory Section 4 (b)	6
7 Section 7	6
8 Powers of inspectors Section 23 (1) (a) and (b)	7

Contents

		Page
9	Parts 3 and 4	7
10	Sections 39 and 40	13
11	Part 6	16
12	Annual certificates for employees Section 47 (a) and (b)	19
13	Annual certificates for employers Section 48 (a), (b), (c) and (d)	20
14	Section 50	20
15	Long service leave formula Section 51 (1), formula	21
16	Section 54	21
17	Section 57	22
18	Review of decisions of board and registrar Section 60 (1) (a), (b) and (c)	24
19	Section 60 (1) (e)	24
20	New section 60 (2) (a), (b) and (c)	24
21	Section 62	24
22	Section 64 (4)	26
23	Section 64 (5)	26
24	New section 64 (6) and (7)	26
25	Section 68 (1), formula	26
26	Section 68 (2), definition of <i>M</i>	26
27	New section 69	27
28	New dictionary	28
Schedule 1	Minor amendments	31
Schedule 2	Schedule to be inserted in Long Service Leave (Cleaning, Building and Property Services) Act 1999	40



Australian Capital Territory

Long Service Leave (Cleaning, Building and Property Services) Amendment Act 2001

2001 No 92

An Act to amend the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*

*Notified under the Legislation Act 2001 on 28 September 2001
(see www.legislation.act.gov.au)*

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

1 Name of Act

This Act is the *Long Service Leave (Cleaning, Building and Property Services) Amendment Act 2001*.

2 Commencement

This Act is taken to have commenced on the commencement of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*.

Note The *Long Service Leave (Cleaning, Building and Property Services) Act 1999* commenced on 23 June 2000.

3 Act amended

This Act amends the *Long Service Leave (Cleaning, Building and Property Services) Act 1999*.

Note The Act is amended in the body of this Act and in schedule 1.

4 Long title

omit

cleaning, building and property services industry

substitute

contract cleaning industry

5 Sections 1 and 3

substitute

1 Name of Act

This Act is the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

2 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 words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*section 29 register*—see section 29.' means that the expression 'section 29 register' is defined in that section 29.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention appears (see *Interpretation Act 1967*, s 11F and 11G).

3 What are *cleaning work* and the *contract cleaning industry*

- (1) For this Act, *cleaning work* is—
 - (a) work carried out in the ACT that has, as its sole or main component, the bringing of premises into, or maintaining premises in, a clean condition; or
 - (b) work carried out by an employee outside the ACT that is taken to be cleaning work under section 4 (Work outside the ACT); or
 - (c) work declared by the Minister under section 3C (1) (c) to be cleaning work.
- (2) For this Act, the *contract cleaning industry* is the industry in which employers provide cleaning work to other people through the provision of employees' services.

3A Who is an *employer*

- (1) For this Act, a person is an *employer*—
 - (a) if the person—

- (i) is engaged in the contract cleaning industry in the ACT;
and
 - (ii) employs (whether in the ACT or elsewhere) 1 or more people to carry out cleaning work; and
 - (iii) is not a person mentioned in subsection (2); or
- (b) if the person is declared to be an employer by the Minister under section 3C (Declarations by Minister about coverage of Act).
- (2) The following are not employers for this Act:
- (a) the Territory;
 - (b) the Commonwealth;
 - (c) the Australian National University;
 - (d) the University of Canberra.

3B Who is an *employee*

For this Act, a person is an *employee* if—

- (a) the person is employed (whether in the Territory or elsewhere) by an employer to carry out cleaning work; or
- (b) if the person is declared to be an employee by the Minister under section 3C.

3C Declarations by Minister about coverage of Act

- (1) The Minister may, in writing, declare—
- (a) a person to be an employer; or
 - (b) a person to be an employee or an employee of a particular employer; or
 - (c) a kind of work to be cleaning work.

- (2) The Minister may not declare under subsection (1) (a) a person mentioned in section 3 (2).
- (3) A person declared to be an employer by the Minister under subsection (1) (a) is taken, for this Act, to be engaged in the contract cleaning industry.
- (4) A person declared to be an employee of a particular employer is taken, for this Act, to be employed by the person who is declared to be the person's employer.
- (5) A declaration under subsection (1) is a disallowable instrument.

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

3D What is an *employment period*

- (1) An *employment period* of a registered employee is a period—
 - (a) beginning on a day when the person becomes an employee of an employer (and is not already an employee of another employer); and
 - (b) ending on the day when the person next ceases to be an employee of an employer (and is not already an employee of another employer).
- (2) For subsection (1), the continuity of the employment period of a registered employee who ceases to be the employee of an employer but on the next day becomes the employee of another employer is not interrupted by the change in employment.
- (3) For subsection (1), an employment period of a registered employee is taken to end on the last day of the employment period if, for the next employment period (the *later period*)—
 - (a) the employer of the employee gives to the board a return under section 39 (Quarterly returns) showing that the employer made no payment of ordinary wages to the employee in the later period; or

- (b) if the employee had 2 or more employers for the later period—
each of the employers gives a return to the board showing that
the employer made no payment of ordinary wages to the
employee in the later period.
- (4) Despite subsection (1), a registered employee's employment period
is taken to include any days when the employee does not carry out
cleaning work because—
 - (a) of incapacity for an injury for which the employee is entitled to
be paid compensation under the *Workers' Compensation Act
1951* by an employer; or
 - (b) 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.
- (5) For this section, a person is taken to have become an employee on
the later of—
 - (a) 23 June 2000; and
 - (b) the date when the person became an employee.

6 Work outside the Territory

Section 4 (b)

substitute

- (b) the employer of the employee give to the board a return under
section 39 (Quarterly returns) and pays to the board the amount
payable under section 39A (Levy payments) for the
employment of the employee.

7 Section 7

substitute

7 Functions of the board

The board's functions are—

- (a) to administer the scheme of long service leave benefits established by this Act; and
- (b) to make recommendations to the Minister under section 39B (1); and
- (c) to make payments under this Act; and
- (d) to keep the section 29 register and section 36 register; and
- (e) to exercise any other function given to the board under this Act or any other Territory law.

8 Powers of inspectors Section 23 (1) (a) and (b)

substitute

- (a) examine any records, books or other documents of the employer to check the accuracy of information given to, or being held by, the board; or
- (b) require a person at the premises to give the inspector—
 - (i) information within the person's knowledge relating to the rights and liabilities under this Act of the employer or an employee (or former employee) of the employer; and
 - (ii) any records, books or documents that are in the person's possession, or to which the person has access, that are reasonably required by the inspector to check the accuracy of information given to, or held by, the board.

9 Parts 3 and 4

substitute

Part 3 Registration of employers

29 Section 29 register

The board must keep a register of registered employers (the *section 29 register*).

30 Application for registration by employers

- (1) An employer must apply to the registrar for registration as an employer within—
 - (a) 1 month after becoming an employer; or
 - (b) any additional time that the registrar allows.

Maximum penalty: 50 penalty units.

Note If a form is approved under s 64A (Approved forms) for an application, the form must be used.

- (2) The registrar may allow additional time for subsection (1) (b) before or after the end of the period of 1 month mentioned in subsection (1) (a).
- (3) A person who is in contravention of subsection (1) may apply to the registrar for registration as an employer.

31 Order to apply for registration

- (1) If a court finds a person guilty of an offence against section 30 (1) or subsection (2) of this section (whether or not it convicts the person), the court may, in addition to imposing a penalty on the person—
 - (a) order that the person apply to the registrar under section 30 for registration as an employer within a stated time; and
 - (b) order that the person pay to the board all amounts that would have been payable by the person under section 39A (Levy

payments) if the person had complied with this Act since becoming an employer.

- (2) A person against whom an order under subsection (1) (a) has been made must comply with the order.

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

- (3) A certified copy of an order under subsection (1) (b) may be filed in a court having civil jurisdiction to the extent of the amount stated in the order and, if so filed, has effect in all respects as if it were a judgment of the court.

32 How applications under s 30 (1) are dealt with

- (1) This section applies if a person applies to the registrar under section 30 (1) for registration as an employer.
- (2) If the registrar is satisfied that the person is an employer, the registrar must register the person as an employer.
- (3) If the registrar is not satisfied that the person is an employer, the registrar must refuse to register the person as an employer.

33 How applications under s 30 (3) are dealt with

- (1) This section applies if a person applies to the registrar for registration as an employer later than 1 month after becoming an employer and after the end of any additional time allowed by the registrar under section 30 (1) (b).
- (2) The registrar must refer the application to the board.
- (3) The board must direct the registrar to register the person as an employer if satisfied that—
 - (a) the person is an employer; and
 - (b) the person has paid to the board all the amounts that would have been payable by the person under section 39A if the

person had complied with this Act since becoming an employer.

- (4) The board must direct the registrar to refuse to register the person as an employer if not satisfied of a matter mentioned in subsection (3).
- (5) The registrar must give effect to a direction under subsection (3) or (4).

34 Registration as an employer

- (1) The registrar registers a person as an employer by entering in the section 29 register—
 - (a) the person's name and address; and
 - (b) the name and address of the principal place of business of the person; and
 - (c) if the person is a corporation—the address of its registered office; and
 - (d) the date when the registration takes effect; and
 - (e) any other particulars that the board directs the registrar to enter in the register.
- (2) A person's registration as an employer takes effect on the later of—
 - (a) 23 June 2000; and
 - (b) the date when the person became an employer.

35 Certificate of registration

- (1) As soon as practicable after registering a person as an employer under section 34 (Registration as an employer), the registrar must give to the person a certificate of registration that states the date when the person's registration took effect.

Note If a form is approved under s 64A (Approved forms) for a certificate, the form must be used.

- (2) If satisfied that a certificate of registration has been stolen, lost or destroyed, the registrar may give to the person a replacement certificate of registration.
- (3) A certificate of registration is evidence of the particulars stated in the certificate.

Part 4 Registration of employees

36 Section 36 register

The board must keep a register of registered employees (the *section 36 register*).

37 Application for registration by employees

A person may apply to the registrar in writing for registration as an employee.

Note If a form is approved under s 64A (Approved forms) for an application, the form must be used.

37A How applications under s 37 are dealt with

- (1) This section applies if a person applies to the registrar under section 37 for registration as an employee.
- (2) The registrar must register the person if satisfied that—
 - (a) the person is an employee; and
 - (b) all employers of the person since the person became an employee are or have been registered.
- (3) The registrar must refuse to register a person if not satisfied that the person is an employee.
- (4) The registrar must refer a person's application to the board if the registrar—
 - (a) is satisfied that the person is an employee; but

- (b) is not satisfied that all employers of the person since the person became an employee are or have been registered.
- (5) The board must—
 - (a) direct the registrar to register a person as an employee if the board is satisfied that all employers of the person since the person became an employee are or have been registered; or
 - (b) direct the registrar to refuse to register a person if the board is not so satisfied.
- (6) The registrar must give effect to a direction under subsection (5).
- (7) For this section, a person is taken to have become an employee on the later of—
 - (a) 23 June 2000; and
 - (b) the date when the person became an employee.

38 Registration as an employee

- (1) The registrar registers a person as an employee by entering in the section 36 register—
 - (a) the person's name, address and date of birth; and
 - (b) the name and address of the principal place of business of each employer of the person; and
 - (c) if any employer of the person is a corporation—the address of its registered office; and
 - (d) the date when the registration takes effect; and
 - (e) any other particulars that the board directs the registrar to enter in the register.
- (2) A person's registration as an employee takes effect on the later of—
 - (a) 23 June 2000; and

- (b) the date when the person became an employee.

38A Appeals against refusal of registrar to register

- (1) If the registrar refuses, under section 37A (How applications under s 37 are dealt with), to register a person as an employee, the registrar must give to the person, within 7 days after making the decision, written notice of the decision and the reasons for the decision.
- (2) The person may apply to the board in writing for review of the registrar's decision within 2 months after receiving notice of the decision.
- (3) The board must—
 - (a) confirm the registrar's decision; or
 - (b) direct the registrar to register the person as an employee.
- (4) Within 7 days after making a decision under subsection (3), the board must give to the person written notice of the decision and the reasons for the decision.

Note 1 The *Interpretation Act 1967*, s 13C, deals with the contents of a statement of reasons for a decision.

Note 2 The *Interpretation Act 1967*, ss 17A and 18, deal with service of documents.

10 Sections 39 and 40

substitute

39 Quarterly returns

- (1) Within 15 days after the end of each quarter or any longer period allowed by the registrar, a person who is (or was at any time during the quarter) an employer must give to the board a return for the quarter that complies with this Act.

Maximum penalty: 20 penalty units.

Note If a form is approved under section 64A (Approved forms) for a return, the form must be used.

- (2) The return must set out, in relation to each person who was an employee of the person during the quarter—
 - (a) the total ordinary wages paid by the employer to the employee during the quarter for cleaning work carried out by the employee; and
 - (b) if the employee's employment as an employee of the person began or ended during the quarter—the date of the beginning or end (or both) of the employment during the quarter.

39A Levy payments

- (1) If a person gives a return to the board under section 39, the person must, at the same time, pay to the board the amount of levy payable by the person for the quarter.

Maximum penalty: 20 penalty units.

- (2) The amount of levy payable by the person is the amount worked out in accordance with the determination under section 39B applying to the quarter.

39B Determination of levy

- (1) The board must, from time to time, recommend in writing to the Minister the levy that should be payable by employers for a quarter.
- (2) The Minister may, in writing, determine the levy payable by employers for a quarter.

Note The *Legislation Act 2001*, 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.

- (3) Before making a determination in relation to a quarter, the Minister must have regard to the recommendation made under subsection (1) in relation to the quarter, but need not follow it.
- (4) A determination under subsection (2) is a disallowable instrument.

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

40 Failure to give quarterly returns or make quarterly payments

- (1) If a person who is required to give the board a return under section 39 (Quarterly returns) fails to give the return to the board in accordance with that section, the person is liable to pay to the board \$25 for each month or part of a month in the period from the day after the last day when the return should have been given in accordance with that section to the day when it is given.
- (2) If a person who is required to pay an amount to the board under section 39A (Levy payments) fails to pay the amount to the board in accordance with that section, the person is liable to pay to the board, in addition to the amount, \$25 for each month or part of a month in the period from the day after the last day when the amount should have been paid in accordance with that section to the day when it is paid.
- (3) The registrar may, on the application of the person liable to pay an amount under subsection (1) or (2) or on the registrar's own initiative, remit all or part of the amount if satisfied that—
 - (a) the circumstances that gave rise to the contravention were not caused directly or indirectly by the person; or
 - (b) because of special circumstances, it would be fair and reasonable to make the remission.
- (4) If a court finds a person guilty of an offence against section 39 (1) (whether or not it convicts the person), the court may, in addition to imposing a penalty on the person, order the person to pay the board

any amount that is payable under subsection (1) to the date of the order.

- (5) If a court finds a person guilty of an offence against section 39A (1) (whether or not it convicts the person), the court may, in addition to imposing a penalty on the person, order the person to pay the board—
- (a) the amount that was the subject of the prosecution; and
 - (b) any amount that is payable under subsection (2) to the date of the order.
- (6) A certified copy of an order under subsection (4) or (5) may be filed in a court having civil jurisdiction to the extent of the amount stated in the order and, if so filed, has effect in all respects as if it were a judgment of the court.

11 Part 6

substitute

Part 6 Entries in section 36 register

43 Particulars to be entered in section 36 register

The registrar must enter the following particulars in the section 36 register for a registered employee:

- (a) the number of days employment, with each employer of the employee, with which the employee is credited under this Act;
- (b) the total ordinary wages of the employee for cleaning work carried out by the employee;
- (c) the employee's entitlement to long service leave;
- (d) details of the long service leave granted to, or taken by, the employee, or payment instead of long service leave made to

the employee (whether under this Act or the *Long Service Leave Act 1976*);

- (e) if the employee has ceased employment in the contract cleaning industry—the date when the employment ceased;
- (f) any other particulars that the board directs.

44 Decisions about ordinary wages by the board

- (1) This section applies if the board is of the opinion that the total ordinary wages stated in a return given to the board under section 39 (Quarterly returns) for a quarter for an employee is insufficient or excessive because of the nature of the cleaning work carried out by the employee in the quarter.
- (2) The board must give to the employer and the employee a written notice that summarises their rights under subsection (3).
- (3) The employer or employee may, within 1 month of being given the notice—
 - (a) by written statement to the board, ask the board to take into account any matters set out in the statement; and
 - (b) ask the board to arrange for the employer or employee to appear before the board, either in person or by a representative, and make representations about the matter.
- (4) If asked under subsection (3) (b), the board must arrange for the employer or employee to appear before the board as soon as practicable.
- (5) After considering any statement and representations under subsection (3), the board may—
 - (a) agree that the total ordinary wages stated in the return for the quarter is reasonable; or
 - (b) fix another amount as the total ordinary wages of the employee for the quarter.

- (6) If the board fixes an amount under subsection (5) (b), the amount is taken, for this Act, to be the total ordinary wages paid by the employer to the employee during the quarter for cleaning work carried out by the employee.
- (7) If the amount fixed under subsection (5) (b) is more than the amount shown as the total ordinary wages of the employee in the return, the employer must pay to the board the difference between the amount paid under section 39A (Levy payments) for the quarter and the amount that would have been payable if the amount fixed by the board had been shown in the return as the total ordinary wages of the employee for the quarter.
- (8) If the amount fixed under subsection (5) (b) is less than the amount shown as total ordinary wages of the employee in the return, the board must pay to the employer the difference between the amount paid under section 39A for the quarter and the amount that would have been payable if the amount fixed by the board had been shown in the return as the total ordinary wages of the employee for the quarter.

45 Employment credits

- (1) A registered employee is to be credited in the section 36 register with 1 day's employment for each day (including a day when the employee does not carry out cleaning duties) in each employment period of the employee.

Example

A day when an employee 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 employee's employment period when the employee does not carry out cleaning duties.

- (2) A registered employee must not be credited with more than 365 days in a financial year.

46 Removing names from section 36 register

- (1) The board must remove from the section 36 register the name of, and particulars relating to, a registered employee if the employee has not been credited with any day's employment for 4 consecutive years.
- (2) If an employee's name and particulars are removed under subsection (1)—
 - (a) the employee ceases to be a registered employee on the date they are removed; and
 - (b) the employee is not entitled to apply for, or be paid an amount for or instead of, long service leave for any employment days entered in the register before the day the employee's registration ceased.
- (3) However, an employee to whom subsection (2) (b) applies is entitled to be paid an amount instead of long service leave for the employment days entered in the register before the employee's registration ceased if the employee would have been entitled to the payment under section 54 (Entitlement to payment instead of leave) if the registration had not ceased.
- (4) This section does not affect any right that a person whose name has been removed from the section 36 register may have to again become a registered employee.

**12 Annual certificates for employees
Section 47 (a) and (b)**

substitute

- (a) the number of days employment, from the date of registration to the end of the previous financial year, that the employee has been credited with in the section 36 register; and
- (b) the number of days employment that the employee has been credited with for the previous financial year; and

- (c) the total ordinary wages paid to the employee during the previous financial year for cleaning work carried out by the employee.

13 Annual certificates for employers Section 48 (a), (b), (c) and (d)

substitute

- (a) the name of each registered employee of the employer recorded in the section 36 register; and
- (b) for each registered employee of the employer—the number of days employment, from the date of registration of the employee to the end of the previous financial year, that the employee has been credited with in the section 36 register; and
- (c) for each registered employee of the employer—the number of days employment that the employee has been credited with for the previous financial year for cleaning work carried out by the employee; and
- (d) the total of all amounts paid by the employer under section 39A (Levy payments) for the previous financial year.

14 Section 50

substitute

50 Years of recognised service

A registered employee is taken to have completed a year of recognised service for each 365 days of recognised service.

15 Long service leave formula
Section 51 (1), formula

omit

220

substitute

365

16 Section 54

substitute

54 Entitlement to payment instead of leave

- (1) A person 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) a registered employee if—
 - (i) the board is satisfied that the employee has permanently ceased cleaning work because of total incapacity; and
 - (ii) the employee is credited with a period of recognised service longer than 54 days but shorter than 10 years; and
 - (b) the personal representative of a registered employee who—
 - (i) has died; and
 - (ii) at the date of death was credited with a period of recognised service longer than 54 days but shorter than 10 years.
- (3) This section applies to a registered employee if—
 - (a) the employee is a working director, or has been a working director while a registered employee; and

- (b) the employee's period of recognised service is longer than 5 years but shorter than 10 years.
- (4) This section applies to a registered employee if—
 - (a) the employee is not a working director, and has not been a working director while registered as an employee; and
 - (b) the employee's period of recognised service is longer than 5 years but shorter than 10 years; and
 - (c) the employee has ceased work in the contract cleaning industry for a reason other than total incapacity, death, or retirement with the intention of leaving the industry permanently; and
 - (d) either—
 - (i) at least 20 weeks have passed since the last employment day credited to the employee; or
 - (ii) the board is satisfied that the employee intends to live in a foreign country.

17 Section 57

substitute

57 Calculation of leave payments

- (1) This section deals with the total and weekly amounts payable by the board to a registered employee under section 55 (Payment for leave) or section 56 (Payment instead of leave) in relation to a long service period of the employee.
- (2) The **total amount** is the amount worked out in accordance with the following formula:

$$\sum \text{relevant years} \left(\frac{\text{actual pay}}{\text{relevant annual award pay}} \right) \times \left(\frac{\text{current annual award pay}}{60} \right)$$

- (3) The *weekly amount* is the amount worked out in accordance with the following formula:

$$\frac{\text{total amount}}{\left(\frac{13}{15} \times \text{number of relevant years}\right)}$$

- (4) In this section:

actual pay, of the registered employee, means the total ordinary pay of the employee in the long service period, as recorded by the board.

annual award pay means—

- (a) 52 times the weekly day shift worker rate for a full-time employee who is a cleaner under the Cleaning (Building and Property Services) (ACT) Award 1998; or
- (b) if the regulations prescribe a different rate, that rate.

current annual award pay, for a long service leave period, means the relevant annual award pay for the last of the relevant years in the long service leave period.

long service period, of the registered employee, means the period in relation to which the employee is entitled to payment under section 55 (Payment for leave) or section 56 (Payment instead of leave).

relevant annual award pay, for a relevant year, means the annual award pay recorded by the board as applying to the registered employee, on 1 July in the year, under the award or agreement that, on that date, applied to the employee.

relevant year, for a registered employee, means a financial year that falls (completely or partly) in the long service period.

Examples

For examples of the application of the formulas in this section, see schedule 1.

**18 Review of decisions of board and registrar
Section 60 (1) (a), (b) and (c)**

substitute

- (a) directing the registrar under section 33 (4) to refuse to register a person as an employer; or
- (b) directing the registrar under section 37A (5) (b) to refuse to register a person as an employee; or
- (c) confirming, under section 38A (3) (a), a decision of the registrar to refuse to register a person as an employee; or

19 Section 60 (1) (e)

substitute

- (e) fixing, under subsection 44(5), another amount as the total ordinary wages of an employee for a quarter; or

20 New section 60 (2) (a), (b) and (c)

substitute

- (a) refusing, under section 32 (3), to register a person as an employer; or
- (b) refusing, under section 39 (1), to allow a longer period for giving a return to the board; or
- (c) refusing, under section 40 (3), to remit all or part of an amount on application by a person.

21 Section 62

substitute

62 Evidentiary certificates

- (1) In a proceeding for a contravention of section 39 (Quarterly returns), a certificate signed by or on behalf of the registrar to the effect of

any of the following paragraphs is evidence of the matters stated in the certificate:

- (a) that the registrar had allowed a stated person an additional stated period to give to the board a return under that section for a stated quarter;
 - (b) that the registrar had not allowed a stated person an additional period to give to the board a return under that section for a stated quarter;
 - (c) that a stated person had not given to the board a return under that section for a stated quarter on or before a stated date;
 - (d) that a stated person had given to the board a return under that section for a stated quarter on a stated date.
- (2) In a proceeding (including a proceeding for a contravention of section 39A), a certificate signed by or on behalf of the registrar to the effect of any of the following paragraphs is evidence of the matters stated in the certificate:
- (a) that a stated amount of levy under section 39A was payable by a stated person for a stated quarter;
 - (b) that, on or before a stated date, a stated person had not paid to the board, under that section, a stated amount of levy that was payable by the person for a stated quarter;
 - (c) that, on a stated date, a stated person paid to the board a stated amount of levy under that section that was payable by the person for a stated quarter.
- (3) Unless the contrary is proved, a document that purports to be a certificate mentioned in subsection (1) or (2) is taken to be such a certificate.
- (4) In this section:

stated means stated in the certificate.

22 Section 64 (4)

omit

for payment to him or her of the relevant amount

substitute

for reimbursement of the amount paid

23 Section 64 (5)

omit

the relevant amount

substitute

the amount applied for

24 New section 64 (6) and (7)

substitute

(6) This section expires on 31 December 2006.

25 Section 68 (1), formula

omit

220

substitute

365

26 Section 68 (2), definition of *M*

omit

months

substitute

complete months

27 New section 69*insert***69 Transitional—Long Service Leave (Cleaning, Building and Property Services) Amendment Act 2001**

- (1) The amendments of this Act made by the amending Act do not affect—
 - (a) any payment made to the board under this Act before the gazettal day; or
 - (b) any payment that a person who is an employer (within the meaning of this Act as amended by the amending Act) was liable to pay to the board before the gazettal day in relation to an employee (within the meaning of this Act as amended by the amending Act) of the employer; or
 - (c) any payment or other benefit received by anyone under this Act before the gazettal day; or
 - (d) the registration of anyone under this Act; or
 - (e) any entry in a register kept under this Act before the gazettal day
- (2) The employers register kept under this Act before the gazettal day is incorporated with, and becomes part of, the section 29 register.
- (3) The employees register kept under this Act before the gazettal day is incorporated with, and becomes part of, the section 36 register.
- (4) Despite section 2 (Commencement) of the amending Act, a person does not commit an offence against this Act because of something done or omitted to be done before the gazettal day unless the act or omission would have been an offence against this Act if this Act were not amended by the amending Act.

(5) In this section:

amending Act means the *Long Service Leave (Cleaning, Building and Property Services) Amendment Act 2001*.

gazettal day means the day the amending Act is notified in the Gazette.

(6) This section expires on the day it commences.

Note The *Interpretation Act 1967*, s 42 provides that the effect of a transitional provision that has declaratory or validating provisions does not end on its repeal.

28 New dictionary

insert

Dictionary

(see s 2)

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

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

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

chairperson means the chairperson of the board.

cleaning work—see section 3 (1).

contract cleaning work—see section 3 (2).

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

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

employee—see section 3B.

employer—see section 3A.

employment period—see section 3D.

long service leave formula means the formula in section 51.

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

ordinary wages, for a person who is or has been an employee, means the amount of wages paid or payable to the person for contract cleaning work under the award or agreement applying to the person for that work, and includes the following kinds of payments (if payable to the person under the award or agreement):

- (a) over-award payments;
- (b) any weekend and public holiday penalty rates earned by shift workers on normal rostered shifts forming the ordinary hours of duty, other than when worked as overtime;
- (c) allowances relating to the person's work (other than allowances for expenses incurred by, or for the use of equipment or a motor vehicle provided by, the person).

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in any year.

recognised service, for a registered employee, means the total number of days for all employment periods entered in the section 36 register for the employee.

registered employee means a person registered under section 38 (Registration as an employee).

registered employer means a person registered under section 34 (Registration as an employer).

registrar means the Long Service Leave Registrar under section 19.

section 29 register—see section 29.

section 36 register—see section 36.

working director means a person who is both a director and an employee of a company if—

- (a) the company has no other employees; or
- (b) all of the employees of the company are also directors.

Schedule 1 Minor amendments

(see s 3)

[1.1] Section 4

omit

Territory

insert

ACT

[1.2] Section 6

omit

, and is not taken to be,

[1.3] Section 8 (2)

omit

a natural person

substitute

an individual

[1.4] Sections 10, 11 and 12

substitute

10 Members of the board

- (1) The board consists of 3 members appointed by the Minister.
- (2) The Minister must appoint—
 - (a) a member to be the chairperson; and
 - (b) a member to represent employer organisations; and

(c) a member to represent employee organisations.

Note 1 A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Interpretation Act 1967*, s 28 (3) (c) and dict, def of *appoint*).

Note 2 A power to appoint a person to a position includes a power to appoint a person to act in the position (see *Interpretation Act 1967*, s 28 (4)-(6)).

11 Term of appointment of members

- (1) A member is appointed for a term of not longer than 5 years.
- (2) The instrument appointing, or evidencing the appointment of, a member must state the term for which the member is appointed.

Note An appointment also ends if the person appointed resigns by signed notice of resignation given to the appointer (see *Interpretation Act 1967*, s 28 (8)).

[1.5] Sections 16 and 17

substitute

16 Providing information to the Minister

The board must give the Minister any information about its operations or the operation of this Act that the Minister requires.

17 Protection of members

- (1) A member does not incur civil liability for an act or omission done honestly and without negligence for this Act.
- (2) A liability that would, apart from this section, attach to a member attaches instead to the board.

[1.6] Section 23 (4) (b)

omit

a natural person

substitute

an individual

[1.7] Section 24 (a)

omit

section 39

substitute

section 39A (Levy payments)

[1.8] Part 2, divisions

renumber divisions when Act next republished under the Legislation Act 2001

[1.9] Section 41 (1)

omit

paragraph 39 (1) (b)

substitute

section 39B (1)

[1.10] Section 42 (1)

omit

keep

substitute

make

[1.11] Section 42 (1) (d)

omit

period of 2 months

substitute

quarter

[1.12] Section 42 (1) (e)

substitute

(e) the date when the employee began employment with the employer; and

[1.13] Sections 42 (2)

omit

cleaning industry

substitute

contract cleaning industry

[1.14] Section 49 (1)

omit

is sent

insert

is given

[1.15] Section 49 (1)

omit

the date of

insert

being given

[1.16] Sections 49 (2) (a)

omit

employees register

substitute

section 36 register

[1.17] Section 52 (2)

substitute

- (2) A registered employee who—
- (a) has become entitled to long service leave under this Act; and
 - (b) is credited with additional employment days in the section 36 register after becoming entitled to long service leave;
- is entitled to long service leave for the additional employment days calculated in accordance with the long service leave formula.

[1.18] Section 53 (3)

substitute

- (3) The employer must give to the employee a written notice, in accordance with subsection (4), stating the date when the long service leave starts and the date when it ends.

Maximum penalty: 50 penalty units.

[1.19] Section 53 (4), penalty

omit

[1.20] Section 56 (2) (c)

substitute

- (c) for an application by a registered employee on the ground that the employee has ceased work in the contract cleaning industry because of total incapacity—be accompanied by a certificate of

a doctor certifying that the employee is totally incapacitated for employment in the industry.

[1.21] Section 56 (3)

omit

registered medical practitioner

substitute

doctor

[1.22] Section 56 (3)

omit

registered medical practitioners

substitute

doctors

[1.23] Section 58

substitute

58 Records of payments and employment

If the board pays an amount to a registered employee in accordance with section 55 (Payment for leave) or section 56 (Payment instead of leave), the board may delete from the section 36 register the particulars relating to the employment period for which the employee has been paid, but must keep another record of—

- (a) the period of employment; 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.

[1.24] Section 59

omit

If a public holiday

substitute

- (1) If a public holiday

[1.25] New section 59 (2)

insert

- (2) In this section:

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

[1.26] Section 64 (1)

omit

or a prescribed law for service in the cleaning industry

substitute

or a law prescribed under the regulations for employment in the contract cleaning industry

[1.27] Section 64 (2)

omit

period of service

substitute

employment period

[1.28] Section 64 (3)

omit

from the employees register the employee's credits for that period of service

substitute

from the section 36 register the employee's credits for that employment period

[1.29] Section 64, heading

substitute

64 Benefits under other laws

[1.30] Section 64 (4)

omit

period of service in the cleaning industry

substitute

employment period in the contract cleaning industry

[1.31] Section 68, heading

substitute

68 Employment credits for first year

[1.32] Section 68 (1)

omit

employees register

substitute

section 36 register

[1.33] Section 68 (1)

omit

days service

substitute

employment days

Schedule 2 **Schedule to be inserted in Long Service Leave (Cleaning, Building and Property Services) Act 1999**

(see s 33)

Schedule 1 **Examples of calculation of leave payments**

(see s 57)

Example 1

Full-time employee receiving above award

Year	Actual pay	Relevant annual award pay	Actual pay ÷ relevant annual award pay
Year 1	20800	19000	1.094736842
Year 2	21800	19000	1.147368421
Year 3	22000	19000	1.157894737
Year 4	22800	20000	1.14
Year 5	23000	21000	1.095238095
Year 6	23100	21000	1.1
Year 7	24100	21000	1.147619048
Year 8	24150	22000	1.097727273
Year 9	25000	22000	1.136363636
Year 10	25200	23000	1.095652174
Total	231950	207000	11.21260023

The total amount formula is—

$$\sum_{\text{relevant years}} \left(\frac{\text{actual pay}}{\text{relevant annual award pay}} \right) \times \left(\frac{\text{current annual award pay}}{60} \right)$$

Applying the formula to this example gives:

$$11.2126 \times \left(\frac{23000}{60} \right) = 4298.16342$$

Which is \$4298.16.

The weekly amount formula is:

$$\sum_{\text{relevant years}} \left(\frac{\text{actual pay}}{\text{relevant annual award pay}} \right) \times \left(\frac{\text{current annual award pay}}{60} \right) \div \left(\frac{13}{15} \times 10 \right)$$

As a weekly payment the amount would be:

$$4298.16 \div \left(\frac{13}{15} \times 10 \right) = \$495.94.$$

Example 2

Part-time employee—5 days a week at various hours

Year	Actual pay	Relevant annual award pay	Actual pay÷ relevant annual award pay
Year 1	10400	19000	0.547368421
Year 2	11400	19000	0.6
Year 3	11400	19000	0.6
Year 4	15000	20000	0.75
Year 5	14000	21000	0.666666667
Year 6	11000	21000	0.523809524
Year 7	19000	21000	0.904761905
Year 8	5000	22000	0.227272727
Year 9	14000	22000	0.636363636
Year 10	8000	23000	0.347826087
Total	119200	207000	5.804068967

The formula:

$$\sum_{\text{relevant years}} \left(\frac{\text{actual pay}}{\text{relevant annual award pay}} \right) \times \left(\frac{\text{current annual award pay}}{60} \right)$$

Applying the formula to this example gives:

$$5.804069 \times \left(\frac{23000}{60} \right) = 2224.893104$$

Which is \$2224.89.

The weekly amount formula is:

$$\sum \text{relevant years} \left(\frac{\text{actual pay}}{\text{relevant annual award pay}} \right) \times \left(\frac{\text{current annual award pay}}{60} \right) \div \left(\frac{13}{15} \times 10 \right)$$

As a weekly payment, the amount would be:

$$2224.89 \div \left(\frac{13}{15} \times 10 \right) = \$256.72.$$

Endnotes

Act amended

- 1 Republished as in force on 24 July 2000 (Republication No 1).

Penalty units

- 2 The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 3 May 2001]

I certify that the above is a true copy of the Long Service Leave (Cleaning, Building and Property Services) Amendment Bill 2001 which was passed by the Legislative Assembly on 30 August 2001.

M J McRae
Clerk of the Legislative Assembly

© Australian Capital Territory 2001