

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Wayne Berry)

Long Service Leave (Private Sector) Bill 2007

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2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Wayne Berry)

Long Service Leave (Private Sector) Bill 2007

A Bill for

An Act to establish a long service leave scheme for the private sector, and for other purposes

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

J2007-537

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Long Service Leave (Private Sector) Act 2007*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Objects of Act**

16 The main objects of this Act are to ensure as far as practicable
17 that—

18 (a) long service benefits are available to all workers in the private
19 sector; and

20 (b) service by a worker in any segment of the private sector can be
21 recognised for the purpose of accruing entitlements to long
22 service benefits; and

(c) recognised service is portable between this Act and each of the following:

(i) the *Long Service Leave Act 1976*;

(ii) the *Long Service Leave (Building and Construction Industry) Act 1981*;

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

4 Dictionary

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

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

For example, the signpost definition '*building and construction industry*—see the *Long Service Leave (Building and Construction Industry) Act 1981*, section 7 (1).' means that the term 'building and construction industry' is defined in that section.

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

5 Notes

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

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

- 1 **6 Offences against Act—application of Criminal Code etc**
- 2 Other legislation applies in relation to offences against this Act.
- 3 *Note 1 Criminal Code*
- 4 The Criminal Code, ch 2 applies to all offences against this Act (see
- 5 Code, pt 2.1).
- 6 The chapter sets out the general principles of criminal responsibility
- 7 (including burdens of proof and general defences), and defines terms
- 8 used for offences to which the Code applies (eg ***conduct, intention,***
- 9 ***recklessness*** and ***strict liability***).
- 10 *Note 2 Penalty units*
- 11 The Legislation Act, s 133 deals with the meaning of offence penalties
- 12 that are expressed in penalty units.

Part 2 Key concepts

7 Who is an *employer*?

- (1) For this Act, a person is an *employer* if—
- (a) the person—
 - (i) employs 1 or more people, whether in the ACT or elsewhere; or
 - (ii) is declared to be an employer under section 11 (Declarations by Minister about coverage of Act); or
 - (b) the person engages a contractor for fee or reward.
- (2) However, the following are not employers for this Act:
- (a) the Territory;
 - (b) a Territory instrumentality;
 - (c) the University of Canberra;
 - (d) a building and construction industry employer;
 - (e) a contract cleaning industry employer;
 - (f) an entity prescribed by regulation.

8 Who is a *worker*?

- For this Act, an individual is a *worker* if the individual is—
- (a) an employee; or
 - (b) a contractor; or
 - (c) declared to be an employee or contractor under section 11.

Section 9

1 **9 Who is an *employee*?**

2 (1) For this Act, an individual is an *employee* if the individual is
3 employed by an employer, whether in the ACT or elsewhere, and
4 whether as—

- 5 (a) a full-time employee; or
6 (b) a part-time employee; or
7 (c) a casual employee; or
8 (d) a person remunerated at piecework rates; or
9 (e) an apprentice.

10 (2) Also, an individual is an employee if the individual is declared to be
11 an employee under section 11.

12 **10 Who is a *contractor*?**

13 For this Act, an individual (other than an employee) is a *contractor*
14 if the individual—

- 15 (a) carries out work for another person for fee or reward on the
16 individual's own account; or
17 (b) is declared to be a contractor under section 11.

18 **11 Declarations by Minister about coverage of Act**

19 (1) The Minister may declare—

- 20 (a) a stated person to be an employer; or
21 (b) a stated individual to be a contractor; or
22 (c) a stated individual to be an employee, or an employee of a
23 stated employer; or
24 (d) a kind of work or stated activity to be work for this Act.

(2) For this Act, an individual declared to be an employee of a stated employer is taken to be employed by the employer.

(3) A declaration is a disallowable instrument.

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

12 What is a *service period*?

(1) A *service period* of a person who is a registered worker is a period—

(a) starting on the day when the person becomes a worker for an employer (and is not already a worker for another employer); and

(b) stopping on the day when the person next stops being a worker for an employer (and is not a worker for another employer).

(2) For subsection (1), the continuity of the service period of a person who stops being a worker for an employer, but on the next day becomes a worker for another employer, is not interrupted by the change of employer.

(3) For subsection (1), a person stops being an employee for an employer (the *former employer*) if, for the employee's next service period (the *later period*)—

(a) any return under section 54 (Quarterly returns by employers) by the former employer shows no ordinary remuneration for the employee in the later period; or

(b) if the employee had 2 or more employers for the later period—no return under section 54 by any former employer shows any ordinary remuneration for the employee in the later period.

Section 13

- 1 (4) Despite subsection (1), a registered worker's service period is taken
2 to include any day when the worker does not carry out work
3 because—
4 (a) of incapacity for an injury for which the worker is entitled to
5 compensation under the *Workers Compensation Act 1951* by
6 an employer; or
7 (b) if the worker is an employee—the employee has been
8 dismissed by an employer to ensure that the employee does not
9 take long service leave while in the employer's employment;
10 or
11 (c) if the worker is a contractor—the contractor's engagement by
12 the employer is ended to ensure that the contractor does not
13 take long service leave while engaged by the employer.
14 (5) For this section, a person is taken to become a worker on the
15 person's registration day as a worker.
16 *Note Registration day*—see s 15.

17 **13 Meaning of *work*—Act**

- 18 (1) For this Act, work carried out by an employee outside the ACT is
19 taken to be ***work*** if the employer—
20 (a) gives the authority a quarterly return under section 54
21 (Quarterly returns by employers) in relation to the work; and
22 (b) pays the authority the levy payable by the employer under
23 section 55 (Levy payments by employers) for the quarter.
24 (2) For this Act, work carried out by a contractor outside the ACT is
25 taken to be ***work*** if the contractor—
26 (a) gives the authority a quarterly return under section 59
27 (Quarterly returns by contractors) in relation to the work; and

(b) pays the authority the levy payable by the contractor under section 60 (Levy payments by contractors) for the quarter.

(3) For this Act, **work** includes work or a stated activity declared to be work under section 11.

14 Meaning of *day*—Act

(1) In this Act:

day—

(a) in relation to a worker covered by an award or agreement—has the same meaning as in the award or agreement; or

(b) in relation to a worker to whom a declaration under subsection (2) applies—means the period stated in the declaration; or

(c) in any other case—means 24 hours.

(2) For this Act, the Minister may declare a stated period to be a day for a worker unless the worker is covered by an award.

(3) A declaration under this section is a notifiable instrument.

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

15 Meaning of *registration day*—Act

In this Act:

registration day—

(a) in relation to a worker who is registered—means the day the application for registration as a worker was received by the registrar; or

(b) in relation to an employer who is registered—means the day the application for registration as an employer was received by the registrar.

Part 3 Administration

Division 3.1 The authority, governing board and staff

Section 16

- 1 **Part 3** Administration
- 2 **Division 3.1** The authority, governing board and
- 3 **staff**
- 4 *Note to div 3.1*
- 5 The governance of territory authorities, including the Private Sector Long Service
- 6 Leave Authority, is regulated by the *Financial Management Act 1996* (the **FMA**),
- 7 pt 9 as well as the Act that establishes them.
- 8 The FMA, pt 9 deals, for example, with the corporate status of territory authorities
- 9 and their powers, the make-up of governing boards, the responsibilities of the
- 10 governing board and board members, how governing board positions can be
- 11 ended, meetings of governing boards and conflicts of interest.
- 12 **16** **Establishment of authority**
- 13 The Private Sector Long Service Leave Authority (the **authority**) is
- 14 established.
- 15 **17** **Authority not territory instrumentality etc**
- 16 The authority is not a territory instrumentality and does not
- 17 represent the Territory.
- 18 **18** **Functions of authority**
- 19 (1) The authority has the following functions:
- 20 (a) administering the scheme of long service leave benefits
- 21 established under this Act;
- 22 (b) making payments under this Act;
- 23 (c) keeping the employers register and workers register;

- 1 (d) any other function given to the authority under this Act or
2 another territory law.

3 *Note* A provision of a law that gives a function to an entity also gives
4 the entity the powers necessary and convenient to exercise the
5 function (see Legislation Act, s 196).

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

8 **19 Delegation by authority**

9 The authority may delegate the authority's functions to the registrar
10 or any other public servant.

11 *Note* For the making of delegations and the exercise of delegated functions,
12 see the Legislation Act, pt 19.4.

13 **20 Establishment of governing board**

14 The authority has a governing board.

15 *Note* An appointment of a governing board member is an appointment under
16 this section (see *Financial Management Act 1996*, s 78 (5) (b)).

17 **21 Governing board members**

- 18 (1) The governing board has 6 members.

19 *Note 1* The chair of the governing board must be appointed under the *Financial*
20 *Management Act 1996*, s 79.

21 *Note 2* The registrar is a member of the governing board (see dict, def **registrar**
22 and *Financial Management Act 1996*, s 80 (4)).

- 23 (2) Two members of the governing board must be appointed to
24 represent employer organisations.

- 25 (3) Two members of the governing board must be appointed to
26 represent employee organisations.

Part 3 Administration

Division 3.1 The authority, governing board and staff

Section 22

1 (4) The chair of the governing board must not be a member mentioned
2 in subsection (2) or (3).

3 (5) A member of the governing board must not be appointed for a term
4 of longer than 5 years.

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

8 (6) The Minister may, under the Legislation Act, section 209, appoint a
9 person to act as a member.

10 (7) The registrar is a non-voting member of the governing board.

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

13 **22 No deputy chair**

14 The Minister must not appoint a deputy chair for the governing
15 board.

16 *Note 1* This section ensures that a deputy chair cannot be appointed for the
17 governing board under the *Financial Management Act 1996*, s 79 (1).

18 *Note 2* The Minister may appoint an acting chair (see Legislation Act, s 209).

19 **23 Deputy registrar**

20 (1) The chief executive must appoint a public servant to be deputy
21 registrar for the authority.

22 *Note 1* For the making of appointments (including acting appointments), see
23 the Legislation Act, pt 19.3.

24 *Note 2* In particular, an appointment may be made by naming a person or
25 nominating the occupant of a position (see Legislation Act, s 207).

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

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

5 **24 Functions of governing board**

6 The governing board has the following functions:

- 7 (a) making recommendations to the Minister under section 56
8 (Determination of levy—employers) and section 61
9 (Determination of levy—contractors);

- 10 (b) recommending to the Minister laws to be declared to be
11 corresponding laws under section 95 (Declaration of
12 corresponding laws);

- 13 (c) any other function given to the governing board under this Act
14 or another territory law.

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

17 **25 Arrangements for staff**

- 18 (1) The authority may arrange with the chief executive to use public
19 servants in the administrative unit under the chief executive's
20 control.

- 21 (2) The *Public Sector Management Act 1994* applies to the management
22 by the authority of public servants who are the subject of an
23 arrangement under subsection (1).

1 **Division 3.2 Inspectors and their powers**

2 **26 Inspectors**

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

5 *Note 1* For the making of appointments (including acting appointments), see
6 the Legislation Act, pt 19.3.

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

11 *Note 3* Words in the singular in a provision include words in the plural (see
12 Legislation Act, s 145).

13 **27 Identity cards**

14 (1) The registrar must give an inspector an identity card stating the
15 person's name and that the person is an inspector.

16 (2) The identity card must show—

17 (a) a recent photograph of the person; and

18 (b) the card's date of issue and expiry; and

19 (c) anything else prescribed by regulation.

20 (3) A person commits an offence if—

21 (a) the person stops being an inspector; and

22 (b) the person does not return the person's identity card to the
23 registrar as soon as practicable, but not later than 7 days, after
24 the day the person stops being an inspector.

25 Maximum penalty: 1 penalty unit.

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

28 Powers in relation to employers' premises

(1) This section applies if an inspector believes on reasonable grounds that premises are the premises of an employer.

(2) The inspector may—

(a) at any reasonable time, enter the premises; or

(b) at any time, enter the premises with the occupier's consent.

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

(4) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.

(5) To remove any doubt, an inspector may enter premises under subsection (2) without payment of an entry fee or other charge.

(6) In this section:

at any reasonable time means at any time during normal business hours or any other time when the premises are being used as a workplace.

occupier, of premises, includes—

(a) a person believed on reasonable grounds to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

29 Production of identity card by inspectors

An inspector must not remain at premises entered under this division if the inspector does not produce his or her identity card for inspection when asked by the occupier.

- 1 **30 Consent to entry by inspectors**
- 2 (1) When seeking the consent of an occupier to enter premises under
- 3 section 28 (2) (b) (Powers in relation to employers' premises), an
- 4 inspector must—
- 5 (a) produce his or her identity card; and
- 6 (b) tell the occupier—
- 7 (i) the purpose of the entry; and
- 8 (ii) that anything found because of the entry may be used in
- 9 evidence in court; and
- 10 (iii) that consent may be refused.
- 11 (2) If the occupier consents, the inspector must ask the occupier to sign
- 12 a written acknowledgment (an *acknowledgment of consent*)—
- 13 (a) that the occupier was told—
- 14 (i) the purpose of the entry; and
- 15 (ii) that anything found because of the entry may be used in
- 16 evidence in court; and
- 17 (iii) that consent may be refused; and
- 18 (b) that the occupier consented to the entry; and
- 19 (c) stating the time and date when consent was given.
- 20 (3) If the occupier signs an acknowledgment of consent, the inspector
- 21 must immediately give a copy to the occupier.
- 22 (4) A court must find that the occupier did not consent to entry to the
- 23 premises by the inspector under this division if—
- 24 (a) the question whether the occupier consented to the entry arises
- 25 in a proceeding in the court; and

1 (b) an acknowledgment of consent for the entry is not produced in
2 evidence for the entry; and

3 (c) it is not proved that the occupier consented to the entry.

4 **31 General powers of inspectors for premises**

5 An inspector who enters premises under this division may, for this
6 Act, do 1 or more of the following in relation to the premises:

7 (a) examine any records required to be kept by an employer under
8 this Act;

9 (b) require the occupier, or anyone at the premises, to give the
10 inspector information relating to the rights and duties under
11 this Act of an employer or someone employed by the
12 employer;

13 (c) require the occupier, or anyone at the premises, to give the
14 inspector records, or copies of records that the person has, or
15 has access to, that are required to be kept by an employer under
16 this Act.

17 *Note 1* The Legislation Act, s 170 and s 171 deal with the application of the
18 privilege against selfincrimination and client legal privilege.

19 *Note 2* A reference to an Act includes a reference to statutory instruments made
20 or in force under the Act, including any regulation and any law or
21 instrument applied, adopted or incorporated by the Act (see Legislation
22 Act, s 104).

1 **32 Contravention of requirement by inspector**

2 A person must take all reasonable steps to comply with a
3 requirement made of the person under section 31 (b) or (c).

4 Maximum penalty: 50 penalty units.

5 **33 Duty to give information and documents**

6 (1) An inspector may, by written notice given to a person, require the
7 person to give to the inspector the stated information or document
8 that the inspector reasonably needs for this Act.

9 (2) The information or document must be given to the inspector within
10 the period stated in the notice or, if an inspector allows a longer
11 period, the longer period.

12 (3) The period stated in the notice must be not less than 14 days after
13 the day the notice is given to the person.

14 (4) A person commits an offence if—

15 (a) the person is required to give information or a document to an
16 inspector under subsection (1); and

17 (b) the person does not take all reasonable steps to comply with
18 the requirement within the period applying under subsection
19 (2).

20 Maximum penalty: 50 penalty units.

21 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
22 privilege against self-incrimination and client legal privilege.

Division 3.3 Finances

34 Money of authority

The money of the authority consists of—

- (a) amounts received by the authority under section 56 (Determination of levy—employers) and section 61 (Determination of levy—contractors); and
- (b) income derived from the investment of money of the authority; and
- (c) amounts borrowed for, and lent to, the authority by the Treasurer under the *Financial Management Act 1996*, section 59 (Borrowing by territory authorities); and
- (d) any other amounts paid to the authority.

35 Application of authority money

The money of the authority must be applied only—

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

36 3-yearly investigation by actuary

- (1) The Minister must appoint an actuary for this Act.

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

Note 2 For example, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

Part 3 Administration

Division 3.3 Finances

Section 36

- 1 (2) The actuary must conduct an investigation of the state and adequacy
2 of the money of the authority—
3 (a) if asked by the governing board; and
4 (b) in any event, at least once every 3 years.
- 5 (3) The actuary must report the results of the investigation to the
6 governing board and state whether, in the actuary's opinion, any
7 reduction or increase is necessary in the rates of levies payable to
8 the authority by employers or contractors under this Act.
- 9 (4) The actuary must give the Minister a copy of each report under this
10 section.

1 **Part 4 Registration**

2 **Division 4.1 Application**

3 **37 Application—pt 4**

4 This part does not apply in relation to work in the—

- 5 (a) building and construction industry; or
- 6 (b) contract cleaning industry.

7 **Division 4.2 Registration of employers**

8 **38 Employers register**

9 The authority must keep a register of registered employers (the
10 *employers register*).

11 **39 Application for registration by employers**

12 (1) An employer must apply to the registrar for registration as an
13 employer not later than—

- 14 (a) 1 month after becoming an employer; or
- 15 (b) the end of any additional time the registrar allows.

16 Maximum penalty: 50 penalty units.

17 *Note* If a form is approved under s 98 for an application, the form must be
18 used.

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

20 (3) The registrar may allow additional time for subsection (1) before or
21 after the end of the 1-month period mentioned in subsection (1) (a).

1 **40 Dealing with applications for registration as employer**

2 (1) This section applies if a person applies to the registrar under
3 section 39 for registration as an employer.

4 (2) The registrar must—

5 (a) register the person as an employer if satisfied the person is an
6 employer; or

7 (b) in any other case—refuse to register the person as an employer.

8 **41 Registration as employer**

9 A person is registered as an employer when the registrar enters the
10 following particulars in the employers register:

11 (a) the person's name and address;

12 (b) the person's trading name (if any);

13 (c) the person's ABN (if any);

14 (d) the address of the person's principal place of business;

15 (e) if the person is a corporation—the corporation's ACN;

16 (f) the person's registration day as an employer;

17 (g) any other relevant particulars the governing board reasonably
18 directs.

19 **42 Certificate of registration for employers**

20 (1) The registrar must give a person registered as an employer under
21 section 41 a certificate of registration that includes—

22 (a) the registration particulars mentioned in section 41; and

23 (b) the person's registration day; and

1 (c) when the certificate of registration ends.

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

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

5 *Note 3* If a form is approved under s 98 for a certificate, the form must be used.

6 (2) An employer's certificate of registration must end not more than 1
7 year after the certificate is issued.

8 (3) The registrar must give a registered employer a certificate of
9 registration to replace a certificate that ends.

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

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

15 **43 Registered employers to notify change of details**

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

19 (a) tell the registrar, in writing, of the change; and

20 (b) return the certificate to the registrar.

21 Maximum penalty: 5 penalty units.

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

23 (3) The registrar must give the employer an amended certificate of
24 registration for the remainder of the term of the returned certificate.

1 **44 Appeals against refusal to register as employer**

2 (1) This section applies if the registrar refuses to register a person as an
3 employer under section 40 (Dealing with applications for
4 registration as employer).

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

7 *Note* If a form is approved under s 98 for an application, the form must be
8 used.

9 (3) The application must be in writing and be made not later than
10 2 months after the day notice of the decision is received by the
11 applicant.

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

14 (a) if satisfied that the person to whom the application relates is an
15 employer—direct the registrar to register the person as an
16 employer; or

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

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

21 *Note* The Legislation Act, pt 19.5 deals with service of documents.

22 **45 Order to apply for registration**

23 (1) If a court convicts a person, or finds the person guilty, of an offence
24 against section 39 (Application for registration by employers), the
25 court may, in addition to imposing a penalty on the person, order the
26 person to—

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

1 (b) pay the governing board the amount that would have been
2 payable by the person under section 55 (Levy payments by
3 employers) or section 60 (Levy payments by contractors) if the
4 person had complied with this Act since becoming an
5 employer.

6 (2) A person who contravenes an order under subsection (1) commits an
7 offence.

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

10 **Division 4.3 Registration of workers**

11 **46 Workers register**

12 The authority must keep a register of registered workers (the
13 *workers register*).

14 **47 Applications for registration by workers**

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

16 *Note* If a form is approved under s 98 for an application, the form must be
17 used.

18 **48 Application by employers for registration of employee**

19 (1) This section applies if a person—

20 (a) is an employee of an employer; and

21 (b) is not registered under this Act; and

22 (c) does not apply for registration under section 47 before the end
23 of 3 months after the day the person starts work for the
24 employer.

Part 4 Registration

Division 4.3 Registration of workers

Section 49

- 1 (2) The employer may apply to the registrar for registration of the
2 person as a worker at any time after the end of the 3-month period.

3 *Note* If a form is approved under s 98 for an application, the form must be
4 used.

5 **49 Dealing with applications for registration as worker**

- 6 (1) This section applies if—

7 (a) a person applies under section 47 for registration as a worker;
8 or

9 (b) an employer applies under section 48 for the registration of a
10 person as a worker.

- 11 (2) The registrar must—

12 (a) if satisfied that the person is a worker—register the person as a
13 worker; or

14 (b) in any other case—refuse to register the person as a worker.

15 **50 Notice of registrar decisions**

- 16 (1) The registrar must, not later than 7 days after making a decision
17 under section 49, give written notice of the decision to—

18 (a) the applicant for registration; and

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

21 *Note* The Legislation Act, pt 19.5 deals with service of documents.

- 22 (2) If the registrar's decision is to register the person as a worker, the
23 notice must state the person's registration day.

1 (3) If the registrar's decision is to refuse to register the person as a
2 worker, the notice must include—

3 (a) an explanation for the decision; and

4 (b) a statement of the effect of section 51.

5 **51 Appeals against refusal to register as worker**

6 (1) This section applies if the registrar refuses to register a person as a
7 worker under section 49 (Dealing with applications for registration
8 as worker).

9 (2) The following people may apply to the governing board for review
10 of the registrar's decision:

11 (a) the applicant for registration;

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

14 *Note* If a form is approved under s 98 for an application, the form must be
15 used.

16 (3) The application must be in writing and be made not later than
17 2 months after the day notice of the decision to be reviewed is
18 received by the applicant.

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

21 (a) if satisfied that the person to whom the application relates is a
22 worker—direct the registrar to register the person as a worker;
23 or

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

Section 52

1 (5) The governing board must give the following people written notice
2 of the decision not later than 7 days after the day the decision is
3 made:

4 (a) the applicant;

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

7 *Note* The Legislation Act, pt 19.5 deals with service of documents.

8 **52 Registration as worker**

9 A person is registered as a worker when the registrar enters the
10 following particulars in the workers register:

11 (a) the person's name, address and date of birth;

12 (b) the name and address of the principal place of business of the
13 person's employer (if any);

14 (c) the person's registration day as a worker;

15 (d) any other relevant particulars the governing board reasonably
16 directs.

Part 5 Quarterly returns and payments

53 Application—pt 5

This part does not apply in relation to work in the—

- (a) building and construction industry; or
- (b) contract cleaning industry.

54 Quarterly returns by employers

- (1) A person who is an employer during a quarter must give the authority a return containing the required information not later than—

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

Maximum penalty: 20 penalty units.

Note If a form is approved under s 98 for a return, the form must be used.

- (2) Subsection (1) does not apply in relation to an employee who—

- (a) is not a registered worker; or
- (b) was not recorded as a worker in the employer's previous quarterly return; or
- (c) carried out work for the employer for less than 5 days during the quarter.

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

- (4) The registrar may allow additional time for subsection (1) before or after the end of the 1-month period mentioned in subsection (1) (a).

Section 55

- 1 (5) In this section:
- 2 *required information*, for an employer for a quarter, means—
- 3 (a) the name of each of the employer's registered workers who
- 4 carried out work for the employer during the quarter; and
- 5 (b) for each of the employer's employees—
- 6 (i) the total ordinary remuneration paid or payable by the
- 7 employer to the employee for work during the quarter;
- 8 and
- 9 (ii) the number of weekdays, or part weekdays, during the
- 10 quarter to which the remuneration relates; and
- 11 (c) anything else prescribed by regulation.

12 **55 Levy payments by employers**

- 13 (1) A person who is an employer during a quarter must, when the
- 14 person gives the authority a return under section 54, pay the
- 15 authority the levy payable under section 56 for the quarter.
- 16 Maximum penalty: 20 penalty units.
- 17 (2) An offence against this section is a strict liability offence.

18 **56 Determination of levy—employers**

- 19 (1) The Minister may determine the levy payable by employers on the
- 20 ordinary remuneration paid or payable by employers to employees.
- 21 *Note* The Legislation Act, s 48 provides that a power to make a statutory
- 22 instrument includes the power to make an instrument about 1 or more of
- 23 the matters and to make different provisions with respect to different
- 24 matters.
- 25 (2) The governing board must, from time to time, recommend in writing
- 26 to the Minister the levy that should be payable by employers.

1 (3) Before making a determination, the Minister must have regard to
2 any recommendation made under subsection (2), but need not
3 follow it.

4 (4) A determination is a disallowable instrument.

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

7 **57 Civil penalty—failure to give quarterly returns etc**

8 (1) This section applies if an employer fails to—

9 (a) give the authority a return in accordance with section 54
10 (Quarterly returns by employers); or

11 (b) pay the authority the levy payable under section 56.

12 (2) The employer is liable to pay to the authority \$100 for each month,
13 or part of a month, for each failure under subsection (1).

14 **Example of liability**

15 If an employer is 1 month late in giving both a return to the authority and making
16 the related payment to the authority, the employer is liable to pay the authority
17 \$200.

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 (3) The registrar may, on application by the person or on the registrar's
22 own initiative, remit all or part of an amount payable under
23 subsection (2) if satisfied that—

24 (a) the circumstances that gave rise to the failure were not caused
25 either directly or indirectly by the person; or

26 (b) because of special circumstances, it would be fair and
27 reasonable to remit.

Section 58

- 1 (4) If a court finds a person guilty of an offence against section 54
2 (Quarterly returns by employers) or section 55 (Levy payments by
3 employers) (whether or not it convicts the person), the court may, in
4 addition to imposing a penalty on the person, order the person to pay
5 the authority—
- 6 (a) any amount that is payable under subsection (2) to the date of
7 the order; and
- 8 (b) for a prosecution for an offence against section 55—the levy to
9 which the prosecution relates.

10 **58 Exemption from levy payments—working directors**

- 11 (1) This section applies if an individual applies to the authority for an
12 exemption under this section.
- 13 (2) If the governing board is satisfied that the individual is a working
14 director, the governing board must grant the individual's employer
15 an exemption from payment of a levy payable under section 56
16 (Determination of levy—employers) for work carried out by the
17 individual.
- 18 *Note* If a form is approved under s 98 for an application, the form must be
19 used.
- 20 (3) The exemption is in force until whichever of the following first
21 occurs:
- 22 (a) the individual stops being a working director other than
23 because he or she ceases to carry out work;
- 24 (b) the individual tells the authority in writing that the individual
25 no longer wishes the exemption to apply in relation to him or
26 her.
- 27 (4) The individual is taken not to be an employee of the employer under
28 this Act while the exemption is in force.

59 Quarterly returns by contractors

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

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

Maximum penalty: 20 penalty units.

Note If a form is approved under s 98 for a return, the form must be used.

- (2) An offence against this section is a strict liability offence.
- (3) The registrar may allow a registered contractor additional time to give the authority a return under subsection (1) before or after the end of the 1-month period mentioned in subsection (1) (a).
- (4) In this section:
- required information***, for a registered contractor, means—
- (a) the number of weekdays, or part weekdays, during the quarter on which the contractor carried out work; and
 - (b) the contractor's total ordinary remuneration for work during the quarter; and
 - (c) anything else prescribed by regulation.

60 Levy payments by contractors

- (1) A person who is a registered contractor during a quarter must, when the person gives the authority a return under section 59, pay to the authority the levy payable under section 61 for the quarter.

Maximum penalty: 20 penalty units.

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

Section 61

61 Determination of levy—contractors

- (1) The Minister may determine the levy payable by registered contractors on the ordinary remuneration paid or payable to registered contractors.

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

- (2) The governing board must, from time to time, recommend in writing to the Minister the levy that should be payable by registered contractors.

- (3) Before making a determination, the Minister must have regard to any recommendation made under subsection (2), but need not follow it.

- (4) A determination is a disallowable instrument.

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

62 Employers to keep records

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

Maximum penalty: 20 penalty units.

- (2) An employer must keep the written record for 6 years after the day the employee stops being employed by the employer.

Maximum penalty: 20 penalty units.

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

1 (4) In this section:

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

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

14 **63 Registered contractors to keep records**

15 (1) A registered contractor must keep a written record of the following:

- 16 (a) the contractor's name and date of birth;
- 17 (b) the nature of the work carried out by the contractor;
- 18 (c) when and for whom work is carried out;
- 19 (d) the contractor's ordinary remuneration for each quarter;
- 20 (e) the number of days worked by the contractor in each quarter.

21 Maximum penalty: 20 penalty units.

Part 5 Quarterly returns and payments

Section 63

- 1 (2) A registered contractor must keep the written record for 6 years after
2 the day the record is made.
- 3 Maximum penalty: 20 penalty units.
- 4 (3) An offence against this section is a strict liability offence.

Section 66

- 1 **66 Review of ordinary remuneration by governing board**
- 2 (1) This section applies if the governing board considers that the total
- 3 ordinary remuneration for a worker stated in a return given to the
- 4 authority under section 54 (Quarterly returns by employers) or
- 5 section 59 (Quarterly returns by contractors) for a quarter is
- 6 insufficient or excessive because of the nature of the work carried
- 7 out by the worker in the quarter.
- 8 (2) The governing board must give the following people a notice that
- 9 summarises the person's rights under subsection (3):
- 10 (a) for a return under section 54—the employer who submitted the
- 11 return and the employee;
- 12 (b) for a return under section 59—the contractor.
- 13 (3) Not later than 1 month after being given the notice a person
- 14 mentioned in subsection (2) may ask the governing board to—
- 15 (a) take into account any matter set out in writing; and
- 16 (b) arrange for the person to appear before the governing board
- 17 (including by a representative) and make representations about
- 18 the matter.
- 19 (4) If asked under subsection (3) (b), the governing board must arrange
- 20 for the person to appear before the governing board as soon as
- 21 practicable.
- 22 (5) After considering any statement and representations under
- 23 subsection (3), the governing board may—
- 24 (a) agree that the total ordinary remuneration stated in the return
- 25 for the quarter is reasonable; or
- 26 (b) fix another amount as the total ordinary remuneration of the
- 27 worker for the quarter.

67 Notice of governing board decisions on review of ordinary remuneration

(1) The governing board must, not later than 7 days after it makes a decision under section 66 (5), give written notice of the decision to—

(a) if the decision relates to a return under section 54 (Quarterly returns by employers)—the employer who gave the return and the employee; or

(b) if the decision relates to a return under section 59 (Quarterly returns by contractors)—the contractor.

(2) If the decision is to fix another amount under section 66 (5) (b), the notice must include—

(a) the total ordinary remuneration fixed by the governing board for the quarter; and

(b) statement about the effect of section 68 and section 69 (Variation of ordinary remuneration—payment of additional amounts).

Note The notice must also comply with the *Administrative Appeals Tribunal Act 1989*, s 25B (1) (see s 93 (3)).

68 Effect of variation of ordinary remuneration

(1) This section applies if the governing board fixes an amount (the **varied amount**) under section 66 (5) (b) in relation to a worker.

(2) The varied amount is taken, for this Act, to be the worker's total ordinary remuneration for work by the worker for the quarter.

Section 68

- 1 (3) The following provisions apply if the varied amount relates to a
2 return under section 54 (Quarterly returns by employers) by an
3 employer of a registered employee:
- 4 (a) if the varied amount is more than the amount (the *returned*
5 *amount*) shown in the return as the total ordinary remuneration
6 of the employee, the employer must pay the authority the
7 additional amount payable under section 56 (Determination of
8 levy—employers) for the employee for the quarter;
- 9 (b) if the varied amount is less than the returned amount, the
10 authority must—
- 11 (i) if asked by the employer to refund the overpayment of the
12 levy payable under section 56—refund the overpayment;
13 or
- 14 (ii) in any other case—credit the overpayment against future
15 amounts payable under section 56 by the employer.
- 16 (4) The following provisions apply if the varied amount relates to a
17 return under section 59 (Quarterly returns by contractors) by a
18 registered contractor:
- 19 (a) if the varied amount is more than the amount (the *returned*
20 *amount*) shown in the return as the total ordinary remuneration
21 of the contractor, the contractor must pay the authority the
22 additional amount payable under section 61 (Determination of
23 levy—contractors) for the contractor for the quarter;
- 24 (b) if the varied amount is less than the returned amount, the
25 authority must—
- 26 (i) if asked by the contractor to refund the overpayment of
27 the levy payable under section 61—refund the
28 overpayment; or
- 29 (ii) in any other case—credit the overpayment against future
30 amounts payable under section 61 by the contractor.
-

69 Variation of ordinary remuneration—payment of additional amounts

(1) This section applies if—

(a) the governing board decides to fix an amount as the total ordinary remuneration of a worker under section 66 (5) (b); and

(b) because the governing board has fixed the amount a person must pay an amount under section 68 (3) (a) or (4) (a).

(2) The person must pay the amount not later than—

(a) 1 month after the day the person receives notice under section 67 of the governing board's decision; or

(b) the end of any additional time the registrar allows.

Maximum penalty: 20 penalty units.

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

(4) The registrar may allow a person additional time to pay the amount under subsection (2) before or after the end of the 1-month period mentioned in subsection (2) (a).

70 Service credit—registered worker's service

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

Example

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

Section 71

1 *Note* An example is part of the Act, is not exhaustive and may extend, but
2 does not limit, the meaning of the provision in which it appears (see
3 Legislation Act, s 126 and s 132).

4 (2) However, a registered worker must not be credited with more than
5 365 days in a financial year.

6 **71 Removing people from workers register**

7 (1) The registrar must remove a person from the workers register if the
8 person has not been credited under this Act or a corresponding law
9 with at least 1 day's service for 4 consecutive years.

10 (2) If the person is removed under subsection (1)—

11 (a) the person stops being a registered worker on the day the
12 person is removed; and

13 (b) the person is not entitled to apply for, or to be paid an amount
14 for or instead of, long service leave for any days of service
15 entered in the register before the day the person stopped being
16 a registered worker.

17 (3) However, subsection (2) (b) does not apply if the person would, but
18 for the person ceasing to be registered, have been entitled to
19 payment for the period under section 81 (Entitlement to payment
20 instead of leave).

21 (4) The registrar must not remove a person from the workers register if
22 the person stops carrying out private sector work and tells the
23 authority that the person is otherwise employed or engaged in other
24 work until whichever of the following first occurs:

25 (a) the person applies to the authority for payment of the total
26 amount for or instead of long service leave;

-
- 1 (b) the person's employer makes an application under
2 section 96 (4) (Benefits under Long Service Leave Act 1976)
3 for payment of the total amount to which the employer is
4 entitled under section 96 (5);
- 5 (c) if the person is a working director or contractor—the person
6 asks the authority to remove the person from the register;
- 7 (d) the period of 10 years, starting on the day when the person
8 stops carrying out private sector work, ends.
- 9 (5) A request under subsection (4) (c) must state—
- 10 (a) the date when the person became otherwise employed or
11 engaged in private sector work; and
- 12 (b) the name and address of the principal place of business of the
13 person's employer (if any).

14 **72 Re-registration in workers register**

- 15 (1) The governing board must direct the registrar to re-register a person
16 in the workers register if—
- 17 (a) the person has been removed from the register under
18 section 71; and
- 19 (b) the governing board is satisfied that the person has been
20 credited with a period of service under a corresponding law
21 within the period of 4 years ending on the day when the person
22 was removed from the register.
- 23 (2) If a person is re-registered under subsection (1), this Act applies in
24 relation to the person as if the person had not been removed from
25 the register.
- 26 (3) This section does not affect any right that a person who has been
27 removed from the workers register may have to again become a
28 registered worker.

Part 7 Annual certificates

73 Annual certificates for workers

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

- (a) the number of days of service, from the worker's registration day to the end of the previous financial year, that the worker has been credited with in the workers register; and
- (b) the number of days of service that the worker has been credited with for the previous financial year; and
- (c) the total ordinary remuneration paid to the worker during the previous financial year by a registered employer; and
- (d) if the worker is a contractor—the total amount paid by the contractor under section 61 (Determination of levy—contractors) for the previous financial year.

74 Annual certificates for employers

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

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

- 1 (ii) the number of days of service that the worker has been
2 credited with for the previous financial year; and
- 3 (c) the total amount paid by the employer under section 56
4 (Determination of levy—employers) for the previous financial
5 year.

6 **75 Objections to matter stated in annual certificate**

- 7 (1) A person who is given a certificate under section 73 (Annual
8 certificates for workers) or section 74 may object to the governing
9 board about the accuracy of a matter stated in the certificate.
- 10 (2) An objection must be made in writing within 6 months after the day
11 the certificate is given to the person objecting.
- 12 *Note* For how documents may be given, see the Legislation Act, pt 19.5.
- 13 (3) If an objection is made, the governing board must decide the
14 objection and must, if the board allows the objection—
- 15 (a) make any necessary correction in the workers register; and
- 16 (b) give an amended certificate to the person who objected.

Part 8 Long service leave and payments

76 Years of recognised service

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

77 Long service leave formula

(1) The *long service leave formula* is—

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

(2) In this section:

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

W means the number of weeks long service leave.

78 Amount of leave

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

(2) A registered worker is entitled to long service leave for additional days of service worked out in accordance with the long service leave formula if the worker—

(a) becomes entitled to long service leave under this Act; and

(b) is credited with the additional days in the workers register after becoming entitled to long service leave.

79 Grant of leave by employers

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

Maximum penalty: 50 penalty units.

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

- (3) The employer of a registered employee commits an offence if—
- (a) the employer grants the employee long service leave; and
 - (b) the employer does not give the employee a written statement of the day when the long service leave starts and stops—
 - (i) at least 2 months before the day when the long service leave starts; or
 - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

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

- (5) In this section:

defined period, for long service leave accrued by a registered employee of an employer, means—

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

Section 80

- 1 (c) if the employer and employee agree on a period longer than
2 6 months—the period agreed.

3 **80 Payment for leave**

- 4 (1) A registered employee who has been granted long service leave
5 under section 79, or a registered contractor who is entitled to long
6 service leave, may apply to the authority for payment for the leave.

7 *Note* If a form is approved under s 98 for an application, the form must be
8 used.

- 9 (2) If the governing board is satisfied that the applicant is entitled to
10 long service leave under this Act, the authority must pay the
11 applicant the amount payable under section 85 (How are leave
12 payments worked out?).

- 13 (3) The authority must pay an applicant any amount payable under
14 subsection (2) at least 7 days before the applicant becomes entitled
15 to the long service leave if—

16 (a) the application is made at least 14 days before the day the
17 applicant becomes entitled to long service leave under this Act;
18 and

19 (b) the applicant asks in the application for the amount to be paid.

20 **81 Entitlement to payment instead of leave**

- 21 (1) This section applies to a registered worker who has at least 5 years
22 recognised service if—

23 (a) the worker permanently leaves work; and

24 (b) at least 20 weeks have passed since the day the worker
25 permanently left work; and

26 (c) the worker has not been credited with service in the workers
27 register for any of the days in the 20-week period.

-
- 1 (2) This section also applies if a registered worker has at least 55 days
2 recognised service and any of the following apply to the worker:
- 3 (a) the worker has left work because of total incapacity;
4 (b) the worker has reached the prescribed retiring age;
5 (c) the worker has died.
- 6 (3) If the governing board is satisfied that this section applies to the
7 worker, the worker is entitled to payment instead of long service
8 leave for the number of weeks long service leave worked out in
9 accordance with the long service leave formula.
- 10 (4) In this section:
- 11 *prescribed retiring age* means—
- 12 (a) for a registered worker who has been granted a service pension
13 under the *Veterans' Entitlements Act 1986* (Cwlth), section 38
14 (Eligibility for partner service pension)—the age at which the
15 worker first receives payment of the service pension; or
- 16 (b) in any other case—
- 17 (i) for a person born before 1 July 1960—55 years; or
- 18 (ii) for a person born during the year 1 July 1960 to 30 June
19 1961—56 years; or
- 20 (iii) for a person born during the year 1 July 1961 to 30 June
21 1962—57 years; or
- 22 (iv) for a person born during the year 1 July 1962 to 30 June
23 1963—58 years; or
- 24 (v) for a person born during the year 1 July 1963 to 30 June
25 1964—59 years; or
- 26 (vi) for a person born after 30 June 1964—60 years.
-

Section 82

82 Application for payment instead of leave

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

Note If a form is approved under s 98 for an application, the form must be used.

- (2) An application by a registered employee, on the ground that the employee has stopped work because of total incapacity, must be accompanied by a doctor's certificate stating that the employee is totally incapacitated for employment.

83 Medical examination may be required for applicant

- (1) This section applies to an applicant for payment under section 82.
- (2) The governing board may require the applicant to submit to a medical examination by a doctor chosen by the governing board from a panel of 3 doctors nominated by the ACT branch of the Australian Medical Association.
- (3) All fees or charges payable for a medical examination under subsection (2) must be paid by the authority.

84 Decision on application for payment

- (1) This section applies to an applicant for payment under section 82.
- (2) If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay the applicant the amount payable under section 85.
- (3) If the applicant fails, without reasonable excuse, to comply with a requirement under section 83 (2), the governing board may refuse the application.

85 How are leave payments worked out?

- (1) For section 80 (Payment for leave) and section 84, the amount payable to a registered worker for, or instead of, long service leave is—
- (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 86; and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 87.
- (2) For subsection (1)—
- (a) long service leave must be taken in the order in which it accrued; and
 - (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

Example

Susan has 10 years of service in private sector work giving her an entitlement to 8.3 weeks long service leave. She first worked in the industry as a registered employee and accrued 5 weeks of the entitlement in that capacity. Susan then worked as a registered contractor and accrued 3.3 weeks of the entitlement in that capacity.

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

- (a) the amount calculated under s 86 where 'D' is 1825 (ie it took 1825 days service as a registered employee to accrue the first 5 weeks of her long service leave entitlement);

Section 86

- 1 (b) the amount calculated under s 87 which is the total of the amounts paid to
2 authority under s 60 for her first 2.41 years work as a registered contractor
3 (ie it took that period of service as a registered contractor to accrue the next 2
4 weeks of her long service leave entitlement) and the interest under s 87 on
5 those amounts.

6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 Legislation Act, s 126 and s 132).

9 **86 Working out leave payments—registered employees**

- 10 (1) For section 85, the amount payable to a registered worker for long
11 service leave for service accrued as a registered employee is worked
12 out as follows:

13
$$0.8667 \times \frac{D}{365} \times R$$

- 14 (2) In this section:

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

17 *designated day* means—

- 18 (a) for a registered employee taking long service leave—the day
19 the leave starts; or
20 (b) for a registered employee being paid instead of taking long
21 service leave—the day the payment is made.

22 *R* is the highest of the weekly averages of the ordinary remuneration
23 received by the registered employee during each of the following
24 periods that applies to the employee:

- 25 (a) the most recent 2 quarters of service as a registered employee
26 before the designated day;
27 (b) the most recent 4 quarters of service as a registered employee
28 before the designated day;

(c) the most recent 20 quarters of service as a registered employee before the designated day;

(d) the most recent 40 quarters of service as a registered employee before the designated day.

Example of *R*

Yosarian has worked in the private sector for 7 years. The periods in paragraphs (a), (b) and (c) apply to Yosarian because he has completed more than 20 quarters (or 5 years), but less than 40 quarters (or 10 years), relevant service.

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

87 Working out leave payments—registered contractors

(1) For section 85 (How are leave payments worked out?), the amount payable to a registered worker for long service leave for service accrued as a registered contractor is the total of the following for the service:

(a) amounts paid by the contractor to the authority under section 61 (Determination of levy—contractors);

(b) interest at the determined rate worked out from the date of receipt of each amount paid under section 61 until the designated day for the leave.

(2) The governing board must determine an interim rate of interest from time to time before the determination of the rate under subsection (1).

Section 88

- 1 (3) The determined rate of interest must—
2 (a) be worked out after the end of each financial year for the
3 previous financial year; and
4 (b) take into account the expenses incurred in administering the
5 authority; and
6 (c) be at least 75% of the rate of interest, expressed as a
7 percentage, earned by the authority worked out as follows:

8
$$\frac{2I}{(FB + FE) - I} \times 100$$

- 9 (4) In this section:
10 *designated day*—see section 86.

11 *FB* means the amount of the total equity of the authority at the end
12 of the financial year immediately before the financial year for which
13 the rate is being determined.

14 *FE* means the amount of the total equity of the authority at the end
15 of the financial year for which the rate is being determined.

16 *I* is the income derived from the investment of the authority's
17 money in the financial year for which the rate is being determined.

18 *total equity*, in relation to the authority, means the total assets less
19 the total liabilities of the authority worked out from the audited
20 balance sheet of the authority for the relevant financial year.

21 **88 Records of payments and service**

- 22 (1) This section applies if the authority pays an amount to a registered
23 worker under section 80 (Payment for leave) or section 84 (Decision
24 on application for payment).
25 (2) The authority must delete from the workers register the details
26 relating to the service period for which the worker has been paid.

- 1 (3) However, the authority must keep another record of—
2 (a) the period of the service; and
3 (b) the amount paid to the worker for long service leave or instead
4 of long service leave; and
5 (c) the period of long service leave (if any) granted to or taken by
6 the worker.

7 **89 Public holidays not to count as leave**

- 8 (1) This section applies if a public holiday falls during a period of long
9 service leave taken by a registered worker.
10 (2) The period of long service leave is increased by 1 day for each
11 public holiday.

1 **Part 9** **Recognised service under**
2 **Building and Construction**
3 **Industry Act and Contract**
4 **Cleaning Industry Act**

5 **90** **Definitions—pt 9**

6 In this part:

7 *Building and Construction Industry Act* means the *Long Service*
8 *Leave (Building and Construction Industry) Act 1981*.

9 *Contract Cleaning Industry Act* means the *Long Service Leave*
10 *(Contract Cleaning Industry) Act 1999*.

11 *eligible worker* means a worker who has recognised service as an
12 employee or contractor under the Building and Construction
13 Industry Act or the Contract Cleaning Industry Act.

14 **91** **Recognition of industry service**

15 (1) In working out an eligible worker's entitlement to a long service
16 benefit under this Act, the worker's recognised service is taken to
17 include the worker's recognised service under—

18 (a) the Building and Construction Industry Act; and

19 (b) the Contract Cleaning Industry Act.

20 (2) For subsection (1), the amount of the worker's recognised service
21 under—

22 (a) the Building and Construction Industry Act is to be worked out
23 in accordance with that Act; and

- 1 (b) the Contract Cleaning Industry Act is to be worked out in
2 accordance with that Act.
- 3 (3) An eligible worker is not entitled to a long service benefit under this
4 Act in relation to recognised service under the Building and
5 Construction Industry Act or the Contract Cleaning Industry Act if a
6 long service benefit is, or has been, provided under that Act in
7 relation to the service.

- 1 **Part 10** **Miscellaneous**
- 2 **Division 10.1** **Review of decisions**
- 3 **92** **Meaning of *reviewable decision*—div 10.1**
- 4 In this division:
- 5 *reviewable decision* means—
- 6 (a) a decision of the governing board mentioned in schedule 1,
7 part 1.1, column 3 under a provision of this Act mentioned in
8 schedule 1, part 1.1, column 2 in relation to the decision; or
- 9 (b) a decision of the registrar mentioned in schedule 1, part 1.2,
10 column 3 under a provision of this Act mentioned in
11 schedule 1, part 1.2, column 2 in relation to the decision.
- 12 **93** **Notice of decisions to be given to affected people**
- 13 (1) If the governing board makes a reviewable decision, the governing
14 board must give written notice of the decision to each person
15 mentioned in schedule 1, part 1.1, column 4 in relation to the
16 decision.
- 17 (2) If the registrar makes a reviewable decision, the registrar must give
18 written notice of the decision to each person mentioned in
19 schedule 1, part 1.2, column 4 in relation to the decision.
- 20 (3) A notice must be in accordance with the requirements of the code of
21 practice in force under the *Administrative Appeals Tribunal*
22 *Act 1989*, section 25B (1).

1 **94** **Review by administrative appeals tribunal of certain**
2 **decisions**

3 A person may apply in writing to the administrative appeals tribunal
4 for review of a reviewable decision.

5 **Division 10.2** **General**

6 **95** **Declaration of corresponding laws**

- 7 (1) The Minister may, on the recommendation of the governing board,
8 declare a law of a State to be a corresponding law if satisfied that it
9 corresponds, or substantially corresponds, to this Act.

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

- 11 (2) A declaration is a notifiable instrument.

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

13 **96** **Benefits under Long Service Leave Act 1976**

- 14 (1) A registered employee who is eligible for long service benefits
15 under this Act and the *Long Service Leave Act 1976* must elect
16 whether to take the benefits provided under this Act or the *Long*
17 *Service Leave Act 1976*.

- 18 (2) The registered employee must tell the governing board in writing
19 about the employee's election and of the recognised service under
20 this Act in relation to which the election is made.

- 21 (3) If a registered employee elects to take long service benefits under
22 the *Long Service Leave Act 1976* in relation to a period of
23 recognised service under this Act, the governing board must remove
24 from the workers register the days of recognised service credited to
25 the employee in the period.

Part 10 Miscellaneous

Division 10.2 General

Section 97

- 1 (4) A registered employer under this Act who is liable to make a
2 payment under the *Long Service Leave Act 1976*, section 8 (Manner
3 of payment for leave) in relation to a period of recognised service by
4 a registered employee may apply to the governing board for
5 payment of the amount on the employer's behalf, or reimbursement
6 of the amount paid, if—
- 7 (a) the employee has elected to take long service benefits under
8 that Act; and
- 9 (b) but for the election, long service benefits would have been
10 payable under this Act in relation to the period of recognised
11 service.
- 12 (5) If the governing board is satisfied the amount is properly payable, or
13 was properly paid, by the employer under the *Long Service Leave*
14 *Act 1976*, section 8, the governing board must make the payment on
15 the employer's behalf, or reimburse the employer, the amount
16 applied for, less any other amount outstanding payable by the
17 employer to the governing board.

18 **97 Evidentiary certificates**

- 19 (1) In a proceeding for a contravention of section 54 (Quarterly returns
20 by employers) or section 59 (Quarterly returns by contractors), a
21 certificate signed by or for the registrar to the effect of any of the
22 following is evidence of the matter stated in the certificate:
- 23 (a) that the registrar had allowed a stated person an additional
24 stated period to give the governing board a return under the
25 section for a stated quarter;
- 26 (b) that the registrar had not allowed a stated person an additional
27 period to give the board a return under the section for a stated
28 quarter;
- 29 (c) that a stated person had given the board a return under the
30 section for a stated quarter on a stated date;

- 1 (d) that a stated person had not given the board a return under the
2 section for a stated quarter on or before a stated date.
- 3 (2) In a proceeding (including a proceeding for a contravention of
4 section 55 or section 60), a certificate signed by or for the registrar
5 to the effect of any of the following is evidence of the matter stated
6 in the certificate:
- 7 (a) that a stated levy under a stated section was payable by a stated
8 person for a stated quarter;
- 9 (b) that, on or before a stated date, a stated person had not paid the
10 governing board, under a stated section, a stated levy that was
11 payable by the person for a stated quarter;
- 12 (c) that, on a stated date, a stated person paid the governing board
13 a stated levy under a stated section that was payable by the
14 person for a stated quarter.

15 **98 Approved forms**

- 16 (1) The registrar may, in writing, approve forms for this Act.
- 17 (2) If the registrar approves a form for a particular purpose, the
18 approved form must be used for that purpose.
- 19 *Note* For other provisions about forms, see the Legislation Act, s 255.
- 20 (3) An approved form is a notifiable instrument.
- 21 *Note* A notifiable instrument must be notified under the Legislation Act.

22 **99 Regulation-making power**

23 The Executive may make regulations for this Act.

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

Part 10 Miscellaneous

Division 10.2 General

Section 100

1 **100 Legislation amended—sch 2**

2 This Act amends the legislation mentioned in schedule 2.

Schedule 1 Review of decisions

(see s 92 and 93)

Part 1.1 Governing board decisions

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
1	section 44 (Appeals against refusal to register as employer)	confirming the registrar's decision to refuse registration	applicant for registration as an employer
2	section 51 (Appeals against refusal to register as worker)	confirming the registrar's decision to refuse registration	applicant for registration as a worker, and if not applicant, the worker
3	section 58 (Exemption from levy payments—working directors)	that the governing board is not satisfied that the applicant is a working director	applicant
4	section 66 (Review of ordinary remuneration by governing board)	fixing under s 66 (5) another amount as the total ordinary remuneration of a worker for a quarter	the worker and the employer who gave the return to which the decision relates
5	section 75 (Objections to matter stated in annual certificate)	not allowing an objection to matter stated in an annual certificate	person objecting

Schedule 1
Part 1.2

Review of decisions
Registrar decisions

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
6	section 80 (Payment for leave)	not allowing a payment	applicant
7	Sections 84 (Decision on application for payment) or 96 (Benefits under Long Service Leave Act 1976)	refusing to pay, or pay on behalf of, the applicant	applicant

Part 1.2 Registrar decisions

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
1	section 54 (Quarterly returns by employers)	refusing to allow a additional time	employer
2	section 57 (Civil penalty—failure to give quarterly returns etc)	refusing to remit all or part of an amount	applicant

Schedule 2 Consequential amendments

(see s 100)

Part 2.1 Financial Management Act 1996

[2.1] Section 54 (1), new dot point

insert

- Private Sector Long Service Leave Authority

[2.2] Section 76 (2), new dot point

insert

- Private Sector Long Service Leave Authority

Part 2.2 Long Service Leave Act 1976

[2.3] Sections 2D and 2E

substitute

2D Entitlements to benefits under this Act and prescribed laws

(1) In this section:

prescribed law means—

- (a) the *Long Service Leave (Building and Construction Industry) Act 1981*; or
- (b) the *Long Service Leave (Contract Cleaning Industry) Act 1999*; or
- (c) the *Long Service Leave (Private Sector) Act 2007*.

- 1 (2) This section applies to an employee who—
2 (a) is registered under a prescribed law; and
3 (b) has elected under a prescribed law to take long service benefits
4 for a period stated by the employee.
5 (3) The employee's election does not prevent the employee from
6 receiving benefits under this Act.
7 (4) However, the employee is not entitled to a benefit under this Act for
8 a period for which the employee has received a benefit under a
9 prescribed law.

10 **Part 2.3 Long Service Leave (Building**
11 **and Construction Industry) Act**
12 **1981**

13 **[2.4] New part 8A**
14 *insert*

15 **Part 8A Recognised service under the**
16 **Private Sector Act**

17 **79A Definitions—pt 8A**

18 In this part:

19 *eligible worker* means a registered worker who also has recognised
20 service under the Private Sector Act.

21 *long service benefit* means long service leave, or payment instead of
22 leave, under this Act.

23 *Private Sector Act* means the *Long Service Leave (Private Sector)*
24 *Act 2007*.

79B Recognition of service under Private Sector Act

- (1) In working out an eligible worker's entitlement to a long service benefit under this Act, the worker's recognised service is taken to include the worker's recognised service under the Private Sector Act.
- (2) For subsection (1), the amount of the worker's recognised service under the Private Sector Act is to be worked out in accordance with that Act.
- (3) In working out the amount to be paid under section 74 (Leave payments for service as registered employee) or 75 (Leave payments for service as registered contractor) to a person who is a registered employee whose period of recognised service includes recognised service under the Private Sector Act (the *private sector service*), the following days are to be excluded from the period of private sector service:
- (a) the number of days during the assessment time when the applicant was absent from employment in the building and construction industry and was paid, or was entitled to be paid, ordinary remuneration, or compensation under the *Workers Compensation Act 1951*, by an employer in that industry, being days that are not credited to the applicant as service in the workers register;
 - (b) the number of public holidays and award holidays during the assessment time.
- (4) An eligible worker is not entitled to a long service benefit under this Act in relation to recognised service under the Private Sector Act if a long service benefit is, or has been, provided under that Act in relation to the service.

1 **Part 2.4** **Long Service Leave (Contract**
2 **Cleaning Industry) Act 1999**

3 **[2.5] New part 8A**

4 *insert*

5 **Part 8A** **Recognised service under the**
6 **Private Sector Act**

7 **83A** **Definitions—pt 8A**

8 In this part:

9 *eligible worker* means a registered worker who also has recognised
10 service under the Private Sector Act.

11 *long service benefit* means long service leave, or payment instead of
12 leave, under this Act.

13 *Private Sector Act* means the *Long Service Leave (Private Sector)*
14 *Act 2007*.

15 **83B** **Recognition of service under Private Sector Act**

16 (1) In working out an eligible worker's entitlement to a long service
17 benefit under this Act, the worker's recognised service is taken to
18 include the worker's recognised service under the Private Sector
19 Act.

20 (2) For subsection (1), the amount of the worker's recognised service
21 under the Private Sector Act is to be worked out in accordance with
22 that Act.

- 1 (3) In working out the amount to be paid under section 78 (Working out
2 leave payments—registered employees) and section 79 (Working
3 out leave payments—registered contractors) to a person who is a
4 registered employee whose period of recognised service includes
5 recognised service under the Private Sector Act (the *private sector*
6 *service*), the following days are to be excluded from the period of
7 private sector service:
- 8 (a) the number of days during the assessment time when the
9 applicant was absent from employment in the contract cleaning
10 industry and was paid, or was entitled to be paid, ordinary
11 remuneration, or compensation under the *Workers*
12 *Compensation Act 1951*, by an employer in that industry, being
13 days that are not credited to the applicant as service in the
14 workers register;
- 15 (b) the number of public holidays and award holidays during the
16 assessment time.
- 17 (4) An eligible person is not entitled to a long service benefit under this
18 Act in relation to recognised service under the Private Sector Act if
19 a long service benefit is, or has been, provided under that Act in
20 relation to the service.

Dictionary

(see s 4)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative appeals tribunal
- appoint
- chief executive (see s 163)
- contravene
- disallowable instrument (see s 9)
- document
- Executive
- exercise
- function
- in relation to
- public servant
- quarter
- the Territory.

agreement means a workplace agreement under the *Workplace Relations Act 1996* (Cwlth).

authority means the Private Sector Long Service Leave Authority established under section 16.

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

building and construction industry—see the *Long Service Leave (Building and Construction Industry) Act 1981*, section 5.

Building and Construction Industry Act, for part 9 (Recognised service under Building and Construction Industry Act and Contract Cleaning Industry Act)—see section 90.

building and construction industry employer means an employer within the meaning of the *Long Service Leave (Building and Construction Industry) Act 1981*.

certificate of registration, for an employer, means a certificate of registration given to the employer under section 42.

chairperson means the chairperson of the governing board.

Contract Cleaning Industry Act, for part 9 (Recognised service under Building and Construction Industry Act and Contract Cleaning Industry Act)—see section 90.

contract cleaning industry—see the *Contract Cleaning Industry Act 1999*, section 5.

contract cleaning industry employer means an employer within the meaning of the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

contractor—see section 10.

corresponding law means a law of a State declared under section 95 to be a corresponding law.

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

day, in relation to an employee—see section 14.

deputy chairperson means the deputy chairperson of the governing board.

deputy registrar means the deputy long service leave registrar under section 23.

eligible worker—see section 90.

employee—see section 9.

employer—see section 7.

employer application means an application under section 48 (Application by employer for registration of employee).

- 1 ***employers register***—see section 38.
- 2 ***governing board*** means the governing board of the authority.
- 3 ***inspector*** means a person who is an inspector under section 26.
- 4 ***levy*** means the levy determined under section 56 or 61.
- 5 ***long service benefit*** means long service leave, or payment instead of
6 leave, under Part 8.
- 7 ***long service leave formula***—see section 77.
- 8 ***member*** means a member of the governing board.
- 9 ***ordinary remuneration***, in relation to a worker, means the total of—
- 10 (a) the salary or wages payable to the worker; and
- 11 (b) any allowances payable to the worker in relation to skill,
12 qualifications, board and lodging; and
- 13 (c) any amounts payable to the worker under a bonus, performance
14 pay or incentive scheme, being amounts that are usually paid to
15 the worker with his or her salary or wages; and
- 16 (d) if the worker is provided with board and lodging by the
17 employer, an amount equal to the value of that board and
18 lodging.
- 19 ***payment instead of leave*** means payment under section 82
20 (Application for payment instead of leave).
- 21 ***quarterly return*** means a return under section 54 (Quarterly returns
22 by employers) or section 59 (Quarterly returns by contractors).
- 23 ***recognised service***, for a registered worker, means the total number
24 of days for all service periods entered in the workers register for the
25 worker.

registered contractor—

- (a) means a registered worker who is a contractor; and
- (b) for Part 8 (Long service leave and payments), includes a registered worker who has been a contractor.

registered employee—

- (a) means a registered worker who is an employee; and
- (b) for Part 8 (Long service leave and payments), includes a registered worker who has been an employee.

registered employer means a person who is registered under section 41.

registered worker means a worker who is registered under section 52.

registrar means the chief executive officer of the authority within the meaning of the *Financial Management Act 1996*, dictionary, definition of ***chief executive officer***.

registration day—see section 15.

reviewable decision—see section 92.

service period—see section 12.

work—see section 13.

worker—see section 8.

workers register—see section 46.

working director means a person who is both a director and an employee of the same corporation if—

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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