

2007

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION AND
CONTRACT CLEANING INDUSTRIES) LEGISLATION AMENDMENT
BILL 2007**

EXPLANATORY STATEMENT

**Presented by
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Overview

The *Long Service Leave (Contract Cleaning Industry) Act 1999* (CCI Act) and the *Long Service Leave (Building and Construction Industry) Act 1981* (BCI Act) each establish a portable long service leave scheme for their respective industry. Under each scheme workers accrue entitlements to long service leave for time worked in the industry. The leave is then funded by payments made by employers in the industry for each worker.

The Bill contains amendments to the both the CCI Act and the BCI Act (the Acts) which will improve the administration of the schemes by making them more closely aligned and simplifying the reporting requirements and the calculation of service and payments. Significantly, the BCI Act has been amended to move from bi-monthly periods to quarterly periods for reporting and payments. The CCI Act has been amended to incorporate contractors into the long service leave scheme, where they choose to participate. It has also been amended to allow reciprocal arrangements with other long service leave schemes for the contract cleaning industry in other States and the Northern Territory. The Bill also makes some technical changes to modernise the Acts.

The Bill contains a number of strict liability offences for both the BCI and CCI Acts. These are consistent with the strict liability offences that were previously included in the Acts. Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The rationale is that professionals engaged in employing people in the building and construction or contract cleaning industries, as opposed to members of the general public, can be expected to be aware of their duties and obligations to their employees. Unless some knowledge or intention is required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

NOTES ON CLAUSES

Part 1 Preliminary

Clause 1 Name of Act

This clause establishes the name of the Act as the *Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007*.

Clause 2 Commencement

This is a formal provision specifying that the Act will commence on a day fixed by the Minister by written notice.

Part 2 Long Service Leave (Building and Construction Industry) Act 1981

Clause 3 Legislation amended – pt 2

This clause specifies that Part 2 of the Bill amends the *Long Service Leave (Building and Construction Industry) Act 1981*.

Clause 4 Sections 5 and 6 and 7.

This clause amends sections 5, 6 and 7 of the BCI Act.

New section 5(1) defines ***building and construction industry*** in relation to the industry in the ACT. This definition has been moved from the old dictionary of the BCI Act. New section 5(2) expands the definition of ***building and construction industry*** in relation to the ACT to include the elements previously found in section 5 of the BCI Act. New section 5(3) defines ***building and construction industry***, in relation to industry carried out in a reciprocating State, as the definition of the industry within the meaning of the corresponding law of that State. This definition has been moved from the old Dictionary of the BCI Act.

New section 5A(1) defines ***building and construction work*** to mean work carried out in the ACT in the building and construction industry under an award prescribed by regulation; or by an employee supervising work carried out in the industry. This definition of building and construction work has been moved from the Dictionary of the BCI Act. It has been simplified and amended to reflect the removal of wages rates from awards.

New section 5(2) provides that work carried out by a worker outside the ACT is taken to be ***building and construction work*** where it would be considered to be building and construction work if it were carried out in the ACT and the worker's employer gives the authority a return under section 37, or if the worker is a registered contractor, the contractor gives the authority a return under section 38. This allows employers and contractors to include their workers or themselves within the scheme where they chose to do so. This provision was previously found in section 6 of the BCI Act. It has been amended to reflect changes to the return and levy provisions in the BCI Act.

New section 6 defines ***employer*** as a person who employs someone else to carry out building and construction work. New section 6(2) provides that the Territory, the Commonwealth, the Australian National University, and the University of Canberra are not ***employers*** for the purposes of the BCI Act. This definition has been moved from the old Dictionary of the BCI Act.

New section 7(1) defines ***contractor*** as an individual who carries out work in the building and construction industry for reward on his or her own account. This definition has been moved from the old Dictionary of the Act and the language has been updated and simplified.

New subsection 7(2) defines ***employee*** as a person who is employed by an employer to carry out building and construction work. The definition specifically includes an apprentice, someone who is remunerated at piecework rates and someone who is registered as an employee though temporarily not employed in the building and

construction industry. New section 7(3) provides that being paid completely or partly by commission does not prevent a person from being an employee. This definition has been updated and moved from the old Dictionary of the BCI Act.

New section 7(4) creates a new definition for *worker* that includes both contractors and employees.

Clause 5 Section 10

Section 10 sets out the functions of the authority. These are: administering the long service leave scheme established under the BCI Act, making payments under the BCI Act, keeping the employers register and the workers register, and any other function given to the authority under the BCI Act or any other law. Clause 5 removes redundant provisions from section 10 and clarifies that the authority may exercise its powers inside and outside the ACT.

Clause 6 Three-yearly investigation by actuary Section 25C(1)

Clause 6 amends subsection 25C(1) to move the responsibility for appointing the actuary from the Treasurer to the Minister responsible for the Act.

Clause 7 Section 27

This clause amends section 27 which sets out the obligation for an employer to apply to the registrar for registration as an employer within one month of becoming an employer unless the registrar allows additional time. It is a strict liability offence, with a maximum penalty of 50 penalty units, to fail to apply for registration within the relevant time.

New section 27 has simplified the process for applying for registration. The new note for this section indicates that where a form has been approved for an application the form must be used by the employer.

Clause 8 Sections 29 and 30

New section 29 clarifies the requirement in old section 29 that the registrar give a person registered under section 28A a certificate of registration that includes the employer's registration day under section 28A and the date when the certificate of registration expires. A certificate of registration is evidence of the matters stated within it.

Under new section 29 certificates of registration cannot be issued for more than 1 year, and must be replaced when they expire. Certificates of registration must also be replaced if the registrar is satisfied that the original has been lost, stolen or destroyed.

New section 30 clarifies the obligations of the employer and the registrar where the employer's details change. The employer must return the certificate of registration to the registrar and notify the registrar in writing of the change within 7 days. Failure to do so is a strict liability offence. Once notified, the registrar must give the employer an amended certificate of registration for the remainder of the term of the returned certificate.

Clause 9 Sections 31 to 35

This clause amends sections 31 to 35 to replace the phrase *employees and contractors* with *workers* wherever it arises.

New section 32 also simplifies the requirements for a person to apply for registration as a worker by removing the detail of the application process. The new note for section 32 states that where a form is approved for application for registration that form must be used.

New section 32A simplifies the requirements for an employer to apply to have an employee registered. The new note for section 32 states that where a form is approved for such an application that form must be used.

New section 33 provides that the registrar must register a person as a worker where either a person has applied for registration as a worker, or an employer has applied for registration of an employee as a worker, and the registrar is satisfied that the person in question is a worker. Otherwise the registrar must refuse to register the person. These provisions have been simplified from those previously found in old section 36.

New section 34 sets out the notice requirements for the registrar after making a decision under section 33. The registrar must give an applicant, and where applicable the person for whom the application was made, a written notice of the decision within 7 days of the decision being made. Where the decision is not to register the person the statement must include an explanation of the decision and explain the appeal rights of the applicant under section 35. This requirement was previously found in old section 36.

New section 35 sets out the process by which a decision by the registrar under section 33 can be appealed. New subsection 35(2) provides that an application to the governing board to review a decision of the registrar under section 33 can be made by the applicant and, where the application was made by an employer for registration of an employee, the person for whom the application was made. New subsection 35(3) provides that the application for review of the registrar's decision must be made in writing and within 2 months of receiving notice of the registrar's original decision. The governing board may either confirm the registrar's decision or direct the registrar to register the person. The governing board must provide written notice to the applicant, and where applicable to the person for whom the application was made of the decision within 7 days of making the decision. These provisions have been simplified from those previously found in old section 36.

Clause 10 Section 36

New section 36 restructures the process by which the registrar can register a person as a worker, which was previously found in old section 36. In particular new sections 36, 36A and 36B change the way that workers can be credited for work in the building and construction industry that was performed prior to applying for registration on the workers register. Previously the worker's registration was back-dated to the day he or she commenced with the employer who employed him or her 12 months before applying for registration.

New sections 36, 36A and 36B change the previous structure so that the worker's registration only takes effect from the date the registrar receives the application for registration, and uses a system of recognised prior service to credit the worker for work performed prior to that date.

New section 36(1) sets out the information the registrar must enter in the workers register when registering a worker. This now includes any recognised prior service for the worker.

New section 36(2) creates a new definition for *recognised prior service* which means service credited to the person under either or both sections 36A and 36B.

New section 36(3) creates a new definition of the *registration day* for a worker which is the day the application for registration is received by the registrar.

New section 36A sets out the circumstances where the board can credit employees for prior service. Under new subsection 36A(1) the governing board may credit a person registered as a worker for each day of the person's service in the building and construction industry within the previous 4 years where an employer has included the person's service in the employer's quarterly return and has included payment for the person's service as part of the employer's levy payment.

If the employee's service has not been recorded in an employer's quarterly return, or the employer has not included payment for the employee's service in the employer's levy payment, under new subsection 36A(2) the governing board may credit the employee for each day in the previous year if it is satisfied that the employee was working in the building and construction industry. New subsection 36A(2) provides an example.

New subsection 36A(3) specifies that the levy payments and quarterly returns in subsection 36(1) include returns and levy payments made before this amending Act takes effect. New subsection 36A(4) provides that subsections 36A(3) and (4) expire 4 years after this section commences. This is because at that time all quarterly returns and levy payments in the four year period referred to in 36A(1) will have been made under the BCI Act as amended by this Act.

New section 36B sets out the circumstances where the board can credit contractors for prior service. Under new section 36B the board may credit a person who is registered as a worker for each day of service within the previous year where either the person has a record of the relevant details of that service (as found in section 39A(1)) or the board is satisfied that the person was a contractor in the building and construction industry. The person must pay the authority the levy payment determined under section 38B for the prior service.

Clause 11 Section 37

New sections 37 and 37AA simplify the process by which employers make reports and payments to the registrar. Previously reports and payments were required to be made every two months. Under the new sections reports and payments are to be made quarterly. The new sections also simplify the information that employers are required to provide.

New section 37 sets out the obligation to give the authority a quarterly return detailing the names of the employer's employees, the total of ordinary remuneration paid or payable to each employee, the number of weekdays or part weekdays to which the remuneration relates, and any other information required by the regulations. The report must be provided within 1 month of the end of the quarter unless the registrar allows the employer additional time. An employer is not required to provide information about unregistered employees, who were not recorded as employees in the employer's previous return and who worked less than 5 days during the quarter. Failure to comply with this obligation is a strict liability offence with a maximum penalty of 20 penalty units.

New section 37AA sets the obligation for a person to pay the authority the amount of the levy (which is determined under section 37AB) at the time the person gives the authority a return under section 37. Failure to comply with this obligation is a strict liability offence with a maximum penalty of 20 penalty units. These provisions were previously found within old subsection 37(1)(b) of the BCI Act.

New section 37AB allows the Minister responsible for the Act to determine the levy payable by employers. The board must make recommendations to the Minister about the levy. The Minister must consider, but need not follow, those recommendations. A determination about the levy is a disallowable instrument. The Minister was previously able to make this determination under subsection 37(3).

New section 37AC is a civil penalty provision previously found in subsections 37(6)-(9). A penalty of \$100 per month, or part thereof, applies for each failure by an employer to make a quarterly return under section 37, and for each failure to pay the levy under section 37AA. This amount of the penalty has increased from the previous amount, which was \$50 per month. Subsection 37AC(3) allows the registrar to remit all or part of the penalty where the registrar is satisfied that the circumstances justify doing so. Subsection 37AC(4) allows the court to order a person guilty of an offence under section 37(1) or 37AA(1), to pay any amount payable under 37AC(1) or under 37AA to the authority. An order under subsection (4) is enforceable as a judgment of the court.

The civil penalty is considered necessary as it allows the registrar of the scheme to flexibly apply a financial penalty to enforce compliance by employers with the requirement to provide quarterly returns. This is necessary to ensure the integrity of the scheme. In the employment context a financial penalty is considered more appropriate than a criminal penalty.

New section 37AD provides that the governing board may exempt an employer from payments under section 37AB for the work of an employee where the employer has made payment for the work to a reciprocal authority with which the employee is registered. In this case that work is not taken not to be building and construction work for the purposes of the BCI Act.

Clause 12 Section 38

New sections 38, 38A and 38B simplify the process by which contractors must provide reports and make levy payments to the authority. Previously reports and

payments were required to be made every two months. Under the new sections reports and payments are to be made quarterly. The new sections also simplify the information that contractors are required to provide.

New section 38 sets out the requirement that a registered contractor provide the authority with a quarterly report that includes the number of weekdays, or part weekdays that the contractors worked in the building and construction industry and the contractor's total ordinary remuneration for building and construction work during the quarter. The report must be provided within 1 month after the end of the quarter, or where the registrar allows a longer time, that time. Failing to provide a return is a strict liability offence with a maximum penalty of 20 penalty units. This requirement was previously in old subsections 38(1) and (2).

New section 38A sets the obligation for a person to pay the authority the amount of the levy (which is determined under section 38B) at the time the person gives the authority a return under section 38. Failure to comply with this obligation is a strict liability offence with a maximum penalty of 20 penalty units. This offence was previously found in old subsection 38(1).

New section 38B allows the Minister responsible for the Act to determine the levy payable by registered contractors. The board must make recommendations to the Minister about the levy. The Minister must consider, but need not follow, that recommendation. A determination about the levy is a disallowable instrument. The Minister was previously able to make this determination under old subsections 38(3) to (5).

Clause 13 New section 39A

New subsection 39A(1) creates an offence where a registered contractor fails to make a written record of the relevant particulars for himself or herself. New subsection 39A(2) makes it an offence for a contractor to fail to keep the written record for 6 years. Each of these offences is a strict liability offence. This subsection brings the record keeping requirements for contractors into line with those for employers found in section 39.

Clause 14 Sections 41 and 42

New sections 41 to 42 simplify the in relation to when the governing board may review the ordinary remuneration reported for employees and contractors in quarterly reports under sections 37 and 38 respectively.

Where the board considers that the amount reported is too high or too low, it must provide the relevant parties with a notice summarising their rights under subsection 41(3). In the case of employees the parties are the employer and the employee. In the case of contractors the party is the contractor.

Subsection 41(3) allows the employer, employee or contractor to make a written representation, or to request to appear before the board to make a representation in person, about the rate of ordinary remuneration.

Under section 41(5) the board may either agree that the rate of ordinary remuneration reported in the quarterly report is reasonable, or fix another amount as the total

ordinary remuneration of the worker for the quarter. Before making this decision the Board must consider any representations made under subsection 41(3).

New Section 41A requires the board to give notice of a decision made under section 41(5). If the decision relates to a return by an employer the board must give written notice of the decision to both the employer and the employee. Where the decision relates to a return by a contractor the board must give written notice to the contractor. If the decision is to fix a new amount for ordinary remuneration under section 41(5)(b) the notice must include both the new amount for ordinary remuneration and a statement about the effect of section 41B (Effect of variation of ordinary remuneration) and 41C (Variation of ordinary remuneration – payment of additional amount of levy).

New section 41B sets out the effect of the board fixing another amount as the ordinary remuneration of a worker. The amount determined by the board is taken to be the total ordinary remuneration of the worker for the purposes of the Act. If the varied amount is more than the reported amount the employer or contractor must pay the additional amount payable under sections 37AB or 38B respectively. Where the varied amount is less than the reported amount the board must refund the overpayment where requested by the employer or contractor, or where no request is made credit the employer or contractor the amount of the overpayment against future amounts payable.

New section 41C sets out the obligation for a person who is required to make an additional payment under section 41B to make that payment within one month of receiving notice from the board of the board about the change in the amount of ordinary remuneration. The registrar may allow additional time. Failure to comply with this obligation is a strict liability offence with a maximum penalty of 20 penalty units.

New section 42 simplifies the way in which workers must be credited with service on the workers register. The workers register replaces the employer and contractors register. Previously the employee's entitlement to be credited with service while on various forms of paid leave was separated from his or her entitlement to be paid for days actually worked. New section 42 amalgamates all entitlements so that employees are entitled to credit for each weekdays in relation to which their employer is required to pay the levy under section 37AB, regardless of whether the employee was on leave or not.

Registered employees must be credited with 1 day's service for each working day or part day for which their employer has paid an amount to the authority under section 37AA, as well as for each working day during a period in which the employee's employment has been interrupted or ended by his or her employer to avoid granting long service leave to the employee.

Registered employees may be credited for service where there has not been a payment under section 37AA if their employer has ceased to employ anyone in the industry and the registrar is satisfied that if it weren't for the employer's failure to make the payment, they would be entitled to be credited for the service.

An employee must not be credited with more than 220 days service per year ending on 30 June, or more than 4 years of service for any single period where the employer has interrupted or ended the employment to avoid granting leave.

Example: Murphy's Building Co. employs Sarah in the building and construction industry. Murphy makes a return under section 39 in which the details for Sarah are ordinary remuneration of \$10,000 for 30 weekdays of service (including 5 days of paid leave). After 30 days of service Murphy's Building Co. becomes aware that Sarah will be eligible to take long service leave and dismisses Sarah to ensure she does not take long service leave. Sarah expected to be employed for a further 15 weekdays in that quarter. Under section 42(2)(a) Sarah would receive credit for 30 days. Under section 42(2)(b) Sarah would receive further credit for the 15 days where her employment was ended to ensure she did not take long service leave.

Example: Farbs Co. employed Patrick in the construction industry for 30 weekdays of service in one quarter. After those 30 days Farbs Co. has financial difficulties and dismisses all of its employees. Farbs Co. makes a return under section 37 which includes ordinary remuneration for Patrick of \$10,000 in relation to 30 days of service, but does not pay the levy under 37AB. Under section 42(4) Patrick will be credited with 30 days of credit as Farbs Co. has ceased to employ anyone to carry out building and construction work and, if Farbs Co. had paid the levy, Patrick would have been entitled to 30 days of credit in the workers register.

Under section 42(5) registered contractors must be credited in the workers register with 1 day's service for each working day or part day on which they carried out building and construction work. A registered contractor cannot be credited with more than 220 days of service per year or with more than 1 day's service for any 2 or more parts of the same weekday.

Clause 15 Sections 53 and 54

New subsection 53 restructures the provisions that create an entitlement to payment rather than leave. Under new section 53 workers are entitled to payment instead of long service leave where:

- They have at least 5 years of service and they have permanently left the industry and at least 20 weeks have passed since they left the industry and they have not been credited with service in the register during that 20 week period.
- They have at least 55 days of recognised service and
 - They have left the industry because of total incapacity; or
 - They have reached the retiring age (in most cases 55 years); or
 - They have died.
- They have 10 years of recognised service and their employer has informed the authority in writing that the employer agrees to the payment.

New subsection 53 (5) defines *prescribed retiring age* as either 55 or, where the worker is entitled to a service pension under the *Veterans' Entitlements Act 1986*, the age at which the worker is first entitled to that pension. The standard retirement age of 55 has been reduced from 65. This definition was previously in the Dictionary to the BCI Act.

Clause 16 Sections 56A, 56B and 57

New sections 56A, 56B, 56C, 56D and 57 simplify the method for working out leave payments for workers.

New section 56A sets out how payment for leave and payment instead of leave is calculated for a registered worker. Payment for any part of the entitlement accrued as a registered employee is worked out in accordance with section 56B. Payment for any part of the entitlement that is accrued as a registered contractor is worked out in accordance with section 56C. Both leave, and payment instead of leave, must be taken in the order in which the entitlement is accrued. New section 56A also includes an example.

New section 56B sets out the method for calculating payments for or instead of leave accrued as a registered employee. Payments are calculated according to the formula in subsection 56A(1) which is based on the worker's average weekly ordinary remuneration for the worker's most recent 2 or 4 quarters of service as an employee, whichever is highest. New section 56B also makes provision for instances where a worker is receiving compensation under the *Workers Compensation Act 1951*. In this case the payment is worked out by reference to the average weekly ordinary remuneration in the 4 quarters prior to the injury for which the worker is receiving compensation.

New section 56C sets out the method for calculating payments for or in lieu of leave accrued as a registered contractor. The amount of the payment is the total of the amounts paid by the registered contractor under section 38A, and interest at the rate determined by the board under subsection 56C(3).

New section 56D allows workers who have a long service leave entitlement under this Act **and** a corresponding law to apply to the authority for a long service leave payment worked out in accordance with the corresponding law. The authority must pay the worker according to the corresponding law if it is authorised by the reciprocal authority to do so.

New section 57 simplifies the process that applies as follows: where a reciprocal authority makes a long service leave payment to a worker who would otherwise have been entitled to a payment under the BCI Act, and the Territory authority is notified of the payment, the Territory authority must reimburse the reciprocal authority in accordance with the formula set out in subsection 57(2). Where the Territory authority reimburses a reciprocal authority for a payment to the worker, its obligation to make a long service leave payment to the worker is discharged.

Clause 17 New section 59C

New section 59C allows the authority to disclose information about an employer's compliance with the Act to the Chief Executive of either an administrative unit or a Territory authority. This section also allows the authority to disclose information in relation to a registered worker's service credits and long service leave benefits to a reciprocal authority for the purpose of the exercise of a function by either the authority or a reciprocal authority.

Clause 18 Section 61

New section 61 provides that the Act will have effect despite anything in a contract of employment to the contrary, unless the contract provides for more beneficial rights to the employee.

Clause 19 New part 15

New Part 15 sets out the transitional arrangements for the amendments. New section 200 provides that the Act will apply in relation to a *declared return period* as if that period were a quarter. The *declared return period* is the period prescribed by regulation.

New subsection 201(1) provides that the Long Service Leave (Building and Construction Industry) Register of Employers, as in force immediately before the commencement of this (amending) Act, is taken to be the employers register. New subsection 201(2) provides that the Long Service Leave (Building and Construction Industry) Register of Employees and Contractors, as in force immediately before the commencement of this Act, is taken to be the workers register. This ensures that all employers, employees and contractors who were registered before these amendments will remain appropriately registered.

New section 202 declares section 43 and 44 to be laws to which the *Legislation Act* section 88 applies. Sections 43 and 44 relate to bonus credits for workers registered within 3 months of the commencement of Part 4 of the BCI Act. These sections are repealed in schedule 1.1 because no one else can register within that time frame. However section 202 ensures that sections 43 and 44 will still be effective for those workers who benefited from them even though they are repealed.

New section 203 allows regulations to prescribe transitional matters that are necessary or convenient because of the enactment of this amending Act. Such a regulation can modify Part 15 to make provision for anything that, in the Executive's opinion is not, or is not adequately or appropriately, dealt with in this part. New section 203 expires 1 year after the section commences.

Clause 20 Dictionary, definition of *working day*

This clause omits the definition of *working day* from the Dictionary as this definition is no longer necessary due to the changes to the way that workers are credited with service in new section 42.

Clause 21 Dictionary, definition of *working director*

This clause changes the definition of *working director* to mean a person who is both a director and an employee of a company at the same time.

Part 3 Long Service Leave (Contract Cleaning Industry) Act 1999

Clause 22 Legislation amended – pt 3

This clause provides that part 3 of the Act will amend the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

Clause 23 Long title

This clause changes the long title of the CCI Act to “An act to provide for long service leave for workers in the contract cleaning industry.”

Clause 24 Sections 3 to 4

New section 3 consolidates and simplifies the definition of *cleaning work* as work that is carried out in the ACT and has as its sole or main component, bringing of premises into, or maintaining premises in, a clean condition; or work that is declared by the Minister to be cleaning work.

Under new subsection 3(2) work will also be considered to be *cleaning work* despite being carried out outside the ACT, where it would otherwise be cleaning work and the employees’ employer, or the contractor, gives the authority a return under section 39 or 41A, and pays the levy payable for the work under 39B or 41C. This provision was previously found in old section 4. It has also been expanded so that contractors’ work is treated consistently with that of employees. This will facilitate the inclusion of contractors in the scheme.

New section 3A simplifies the meaning of *contract cleaning industry* and creates a meaning for the term with respect to reciprocating States. In the Territory the *contract cleaning industry* is defined as the industry in which employers provide cleaning work to other people through the provision of workers’ services. For reciprocating States *the contract cleaning industry* is defined as the contract cleaning industry within the meaning of the corresponding law of that State. This new definition will facilitate recognition of service performed in other jurisdictions.

New section 3B defines *employer* as a person who is engaged in the contract cleaning industry in the ACT who employs 1 or more employees to carry out cleaning work; or is declared to be an employer under section 3D.

New subsection 3B(2) sets out a list of bodies that are not employers for the purposes of the Act.

New section 3C defines *contractor*, *employee* and *worker* for the purposes of the CCI Act. A *contractor* is an individual who is not an employee and who carries out cleaning work for reward in his or her own account. This is a new definition for the CCI Act. An *employee* is an individual who is employed by an employer to carry out cleaning work. A *worker* is a contractor or an employee. This is a new definition for the CCI Act.

New section 3D allows the Minister responsible for the Act to make a number of declarations in relation to the Act. These include declarations that a person is an employer, an individual is an employee, an individual is a contractor, and a kind of work is cleaning work. These provisions were previously found in old section 3C and have been expanded to include declarations about contractors.

New section 4 defines *service period* for the purposes of the Act. The term *service period* replaces the previous term *employment period* and the definition has been simplified and expanded to include all workers rather than just employees.

A *service period* now begins the day the person first becomes a worker for an employer and ends when the person ceases to be a worker of an employer. An employee's service period is not interrupted when the employee ceases to work for one employer so long as they begin employment with a new employer the following day.

Continuity of a service period is not broken where a worker ceases to be a worker for an employer on one day but on the next day becomes a worker for another employer.

A person stops being an employee for an employer or employers when, for the employee's next service period, any return under section 39 by the former employer or employers shows no ordinary remuneration for the employee in the later period.

A service period includes any day the worker does not carry out cleaning work because of incapacity for which the worker is entitled to compensation under the *Workers Compensation Act 1951* or where an employer dismisses an employee, or ends the engagement of a contractor to ensure the worker does not take long service leave while engaged by the employer.

A person is taken to become a worker on the person's registration day as a worker.

Clause 25 Section 7

New section 7 simplifies the functions of the authority so that they are consistent with those of the authority under the BCI Act. Under new section 7 the authority will administer the scheme of long service leave benefits, make payments under the Act and maintain the employers registers and workers register. The authority may exercise its functions inside and outside the ACT, including in a foreign country which may be required where the authority claims money from an employer who is based in a foreign country.

Clause 26 Section 13

New section 13 consolidates the functions of the governing board under the CCI Act. In addition to the previous functions of the board, this section outlines that the governing board can make recommendations to the Minister under new section 41C and recommend laws to be declared corresponding laws under new section 63B.

Clause 27 Section 23

New section 23 sets out the sources of money held by the authority. These have been expanded to include amounts received by the authority under new section 41B (Levy payments by contractors) and amounts paid to the authority under a reciprocal agreement. The new provisions also reflect that where money is borrowed for the authority this will be done by the Treasurer under the *Financial Management Act 1996*.

Clause 28 Three-yearly investigation by actuary Section 25 (1)

This clause changes the responsibility for appointing the actuary from the Treasurer to the Minister responsible for the Act.

Clause 29 Sections 34 and 35

New section 34 lists the information that the registrar must enter into the employers register in order to register a person as an employer. New subsection (2) provides that a person's registration day as an employer is the date that the application for registration is received by the registrar.

New section 35 outlines the information that must be included on a certificate of registration for employers. New subsection 35(2) stipulates that a certificate of registration must not be issued for more than 1 year, and that a new certificate of registration must be provided to the employer when a certificate expires and they remain an employer. A new certificate must also be issued where a certificate is lost or stolen. This section has been redrafted so that it is consistent with the equivalent section in the BCI Act.

New section 35A creates a strict liability offence, with a maximum penalty of 5 penalty units, where an employer's details as shown on the certificate of registration change and the employer does not return the certificate to the registrar, and notify the registrar in writing of the change within 7 days. The registrar must give the employer an amended certificate of registration that reflects those changes, for the remainder of the term of the original certificate.

Clause 30 Part 4

New Part 4 restructures the process by which the registrar can register a person as a worker, previously found in old Part 4. In particular new part 4 incorporates contractors where they elect to be registered.

New sections 38, 38A and 38B change the way that workers can be credited for work in the contract cleaning industry prior to applying for registration on the workers register. Previously the employee's registration was back-dated to the day that the worker became an employee.

New sections 38, 38A and 38B have changed the previous structure so that the worker's registration only takes effect from the date they the registrar receives the application for registration in most circumstances, and instead uses a system of recognised prior service to credit the worker for work performed prior to that date.

New section 36 changes the name of the *section 36 register* to the *workers register*.

New section 37 simplifies and consolidates the process for applications for registration as workers. New subsection 37(2) stipulates that the registrar must register an applicant as a worker if satisfied that the applicant is a contractor or if satisfied that the applicant is an employee and all of the applicant's employers are, or have been, registered employers. Where the registrar is satisfied that the applicant is an employee, but is not satisfied that all of the applicant's employers are, or have been registered employers, the registrar must refer the application to the governing board. In any other case the registrar must refuse to register the applicant.

Under new subsection 37(3), where the registrar refers an application to the governing board under subsection 37(2) the governing board must direct the registrar to register the applicant as a worker where they are satisfied that all the applicant's employers

since they became an employee are, or have been registered employers. If they are not satisfied, the governing board must direct the registrar not to register the applicant.

Under new subsection 37(4) the registrar must advise applicants of the outcome of decision referred to the governing board in writing no later than 7 days of the decision being made.

New section 37A clarifies the notice requirements for the decisions made under section 37. The registrar must give the applicant written notice of a decision made under section 37 (except for a decision to refer an application to the governing board under subsection 37(2)(c)) within 7 days of the decision being made. Where the decision is to register the person as a worker, the notice must state the person's registration day as a worker. If the decision is to refuse to register the person under subsection 37(2)(d), the notice must include an explanation for the decision and a statement of the appeals process under section 37B. This requirement was previously located in old section 38A.

New section 37B sets out the process for appeals against refusal of registrar to register a person as a worker under section 37(2)(d). The person may apply to the governing board, in writing for a review of the registrar's decision. The person must apply for a review within 2 months after the person receives the notice of the decision. The governing board must then, either confirm the registrar's decision, or direct the registrar to register the person as a worker. The governing board must give the person written notice of the decision with 7 days of the decision being made. This section has been moved from old section 38A of the Act.

New section 37C allows the governing board to direct the registrar to register an employee, where they become aware of information outside of the application indicating that a person is or was an employee and the board is satisfied that the person is or was an employee and that all the employers of the person since the person became an employee are or have been registered employers. This is a new function for the governing board.

New section 38 sets out the information the registrar must enter in the workers register when registering a worker. This now includes any recognised prior service credited to the person under new section 38A or 38B. New section 38(3) defines the **registration day** for the worker as the day the application for registration is received by the registrar or, where the governing board directs the registrar to register an employee under section 37C, the day the board gives that direction.

Under new subsection 38A(1) the governing board may credit a person registered as a worker for each day of the person's service in the contract cleaning industry within the previous 4 years where an employer has included the person's service in the employers quarterly return and has made payment for the person's service as part of the employer's levy payment.

If the employee's service has not been recorded in an employer's quarterly return, or the employer has not made payment for the employee's service in the employer's levy payment, under new subsection 38A(2) the governing board may credit the employee for each day in the previous year that the governing board is satisfied that the

employee was working in the contract cleaning industry. New subsection 38A(2) provides an example.

New subsection 38A(3) provides that the levy payments and quarterly returns in subsection 38(1) include returns and levy payments made before this amending Act takes effect. New subsection 38A(4) provides that subsections 36A(3) and (4) expire 4 years after this section commences. This is because at that time all quarterly returns and levy payments in the four year period referred to in 38A(1) will have been made under the CCI Act as amended by this Act.

New section 38B sets out the circumstances where the board can credit contractors for prior service. Under new section 38B the board may credit a person who is registered as a worker for each day of service within the previous year where either the person has a record of the relevant details of that service (as found in section 42A(1)) or the board is satisfied that the person was a contractor in the building and construction industry. The person must pay the authority the levy payment determined under section 41C for the prior service.

Clause 31 Section 39

New Section 39 is a strict liability offence where an employer fails to give the authority a quarterly return detailing specified information about their employees and the work they have carried out over the quarter. This offence was previously found in old section 39, however under new subsection 39(1)(a) the standard time allowed to provide the return has been extended to 1 month. This timeframe can also be extended by the registrar under new subsection 39(4). New subsection 39(2) also clarifies that an employer does not need to provide a return in relation to an employee who is an unregistered employee, was not recorded as an employee in the employer's previous quarterly return, and who carried out less than 5 days of cleaning work during the quarter.

New subsection 39 (5) defines *required information* for an employer as the name of each employee, total ordinary remuneration paid or payable during the quarter and anything else prescribed by regulation.

Clause 32 Section 40

New section 40 creates a civil penalty of \$100 per month, or part there of, for each failure to make a quarterly return under section 39, and for each failure to pay the levy under section 39B. Subsection 40(3) allows the registrar to remit all or part of the penalty where the registrar is satisfied that the circumstances justify doing so. Subsection 40(4) allows the court to order a person guilty of an offence under section 39(1) or 39A(1), to pay any amount payable under 39(1) or under 39A to the authority. An order under subsection (4) is enforceable as a judgment of the court. This penalty provision was previously found in old section 40, however the penalty has increased from \$25 per month or part month to \$100 per month or part month.

The civil penalty is considered necessary as it allows the registrar of the scheme to flexibly apply a financial penalty to enforce compliance by employers with the requirement to provide quarterly returns. This is necessary to ensure the integrity of the scheme. In the employment context a financial penalty is considered more appropriate than a criminal penalty.

Under new section 40A the governing board may provide an employer with an exemption from an amount owed under section 39B where the employer employs someone to carry out cleaning work in the ACT for a period of not more than one year, and the employer makes a payment for the work to a reciprocal authority with which the employee is registered. If the governing board provides such an exemption the work to which the exemption applies is taken not to be cleaning work for the purposes of the CCI Act. This is a new provision to facilitate reciprocal arrangements with other contract cleaning long service leave schemes.

Clause 33 Sections 41A, 41B and 41C

New section 41A creates a strict liability offence where a contractor fails to give the authority a quarterly return detailing specified information about the work they have carried out over the quarter. New subsection 41A (4) defines *required information* for a registered contractor as the contractor's total ordinary remuneration for cleaning work during the quarter and anything else prescribed by regulation. This is a new section to facilitate the inclusion of contractors within the scheme. It is consistent with the obligations of employers under the CCI Act.

New section 41B creates an obligation for a registered contractor to pay the authority the levy amount under section 41C when providing a quarterly return under section 41A. Failure to comply with this obligation is a strict liability offence with a maximum penalty for 20 penalty units.

New section 41C allows the Minister responsible for the Act to determine the levy payable by registered contractors. The board must make recommendations to the Minister about the levy. The Minister must consider, but need not follow, that recommendation. A determination about the levy is a disallowable instrument. This is a new provision.

Clause 34 New section 42A

New section 42A requires that registered contractors keep a written record of: their name and date of birth; the nature of the cleaning work they carry out; when and for whom the work is carried out; and their ordinary remuneration for each quarter. Failure to make a written record and failure to keep the record for 6 years are strict liability offences with maximum penalties of 20 penalty units each. This is a new provision and is consistent with the record keeping requirement for employers.

Clause 35 Section 54

New section 54 significantly simplifies and clarifies the circumstances in which workers are entitled to a payment instead of leave.

A worker is entitled to payment instead of long service leave where:

- The worker has at least 5 years of service and has permanently left the contract cleaning industry and 20 weeks have passed and the worker has not been credited with service in the workers register during that 20 weeks; or

- The worker has at least 55 days of recognised service and any of the following apply:
 - The worker has left the contract cleaning industry because of total incapacity;
 - The worker has reached the prescribed retiring age; or
 - The worker has died.

Where a worker is entitled to payment instead of long service leave this is calculated in accordance with the long service leave formula.

New subsection 54(4) provides that the prescribed retiring age is either 55 or, where the worker has been granted a service pension under the *Veteran's Entitlements Act 1986*, the age at which the worker was first entitled to the pension. This is a new definition for the CCI Act.

Clause 36 Sections 57 and 58

New sections 57, 57A, 57B, 57C and 57D simplify the method for working out leave payments for workers.

New section 57 sets out how payment for leave and payment instead of leave is calculated for a registered worker. Payment for any part of the entitlement accrued as a registered employee is worked out in accordance with section 57A. Payment for any part of the entitlement that is accrued as a registered contractor is worked out in accordance with section 56A. Both leave, and payment instead of leave must be taken in the order in which the entitlement is accrued. New section 57 also includes an example.

New section 57A sets out the method for calculating payments for or instead of leave accrued as a registered employee. Payments are calculated according to the formula in subsection 57A(1) which is based on the worker's average weekly ordinary remuneration for the worker's most recent 2, 4, 20 or 30 quarters of service as an employee, whichever is highest. New section 57A(2) also includes an example of how to determine the appropriate average weekly ordinary earnings for this section.

New section 57B sets out the method for calculating payments for or in lieu of leave accrued as a registered contractor. The amount of the payment is the total of the amounts paid by the registered contractor under section 41CA, and interest at the rate determined by the board under subsection 57B(3).

New section 57C allows workers who have a long service leave entitlement under this Act **and** a corresponding law to apply to the authority for a long service leave payment worked out in accordance with the corresponding law. The authority must pay the worker according to the corresponding law if it is authorised by the reciprocal authority to do so.

New section 57D simplifies the process that applies where a reciprocal authority makes a long service leave payment to a worker who would otherwise have been entitled to a payment under the BCI Act, and the Territory authority is notified of the payment, the Territory authority must reimburse the reciprocal authority in accordance with the formula set out in subsection 57D(2). Where the Territory

authority reimburses a reciprocal authority for a payment to the worker, its obligation to make a long service leave payment to the worker is discharged.

New section 58 requires that the authority delete from the workers register the details relating to a service period where the authority pays an amount to a registered worker under sections 55 or 56, or reimburses a reciprocal authority under section 57D. However the authority must keep a record of the period of the service and the amount paid to the worker and the period of long service leave granted to the worker.

Clause 37 New section 62A

New section 62A allows the authority to disclose information in relation to an employer's compliance with the CCI Act to a Territory entity for the purposes of the entity exercising its functions. Section 62A also allows the authority to disclose information in relation to a registered worker's service credits and long service leave benefits to a reciprocal authority for the purpose of the exercise of the functions of the Territory authority under this Act or the reciprocal authority under a corresponding law.

Clause 38 New sections 63A and 63B

New section 63A provides that the CCI Act has effect despite any contract of employment to the contrary unless the contract gives the employee rights that are more beneficial to the employee than the rights given to the employee under this Act. This is a new provision.

Section 63B is a new provision that allows the Minister responsible for the Act to declare a law of a State to be a corresponding law if satisfied that it corresponds to this Act and if the governing board recommends doing so. A declaration is a notifiable instrument.

Clause 39 New section 64AA

Section 64AA is a new provision that allows the Minister to enter into an agreement with the Minister of a State who administers a corresponding law about long service leave payments to people carrying out work in the contract cleaning industry in the State. The agreement may include provisions about payments for or in lieu of long service leave, exchange of information between the Territory authority and the reciprocal authority and anything else the Minister considers appropriate.

Clause 40 New part 15

New part 15 sets out the transitional provisions for this amending Act. New section 200 provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this amending Act. The regulations may modify this part (including its operation in relation to another Territory law) to make provision for anything that is not, in the Executive's opinion adequately dealt with in this part. The regulation has effect despite anything else in the CCI Act or any Territory law. Part 15 expires 1 year after the section commences.

Clause 41 Dictionary, new definitions of *contractor* and *corresponding law*

This clause inserts new signpost definitions for *contractor* and *corresponding law* into the Dictionary.

Clause 42 Dictionary, new definition of *ordinary remuneration*

This clause inserts a new definition for *ordinary remuneration* which is the amount paid or payable to a person for cleaning work, not including expenses incurred by the person or the use of materials or equipment provided by the person.

Clause 43 Dictionary, definition of *ordinary wages*

This clause omits from the Dictionary definition of *ordinary wages* as this term has been replaced by *ordinary remuneration*.

Clause 44 Dictionary, new definitions of *reciprocal agreement*, *reciprocal authority*, and *reciprocating State*

This clause inserts into the Dictionary a new signpost definition for *reciprocal agreement*.

This clause also includes in the Dictionary a new definition for *reciprocal authority* as the entity that administers a long service leave scheme under a corresponding law, and a new definition of *reciprocating State* as a State with which there is a reciprocal agreement in force.

Clause 45 Dictionary, definition of *registered employee*

This clause omits from the Dictionary the definition of *registered employee* as this term is no longer used in the CCI Act.

Clause 46 Dictionary, new definitions of *registration day*

This clause inserts new signpost definition of *registration day* into the Dictionary.

Clause 47 Dictionary, new definitions of *registered worker*, *service period* and *worker*

This clause inserts new signpost definitions for *registered worker*, *service period* and *worker* into the Dictionary.

Clause 48 Dictionary, definition of *working director*

This clause amends the dictionary definition of *working director* so that it includes directors who are also employees of the company even where the company has other employees who are not also directors. This will allow a broader range of directors to choose to exclude themselves as employees from the operation of the CCI Act.

Schedule 1 Other amendments

Part 1.1 Long service Leave (Building and Construction Industry Act)

Clause [1.1] Long title

This clause amends the long title of the BCI Act to remove the phrase *employee and contractors* and replace it with *workers*.

Clause [1.2] Section 16

This clause updates and clarifies section 16 which sets out the functions of the board. The functions of the board are: to make recommendations to the Minister about the levies paid by employers and contractors under sections 37AB and 38B respectively; to recommend to the Minister laws to be declared to be corresponding laws under

section 62; and any other function given to the authority under this Act or any other Territory law.

Clause [1.3] Section 20 heading

This clause amends the heading for section 20 to clarify that it relates to employers' premises.

Clause [1.4] Section 22(1)

This clause amends section 22(1) so that the reference to 20(2)(b) reflects the amended heading for section 20.

Clause [1.5] Section 25A

This clause updates the references within section 25A to include new numbering for the sections relating to levies paid by employers and contractors, and to reflect the fact that under the *Financial Management Act 1996* the Treasurer is responsible for borrowing money on behalf of the authority.

Clause [1.6] Section 25C

This clause amends section 25C so that it refers to *levies* rather than *periodic payments* paid by employers and contractors to the authority.

Clause [1.7] Section 25C(3)

This clause replaces the term *periodic payments* to *levies* in subsection 25C(3) to reflect the new terminology used in the BCI Act.

Clause [1.8] Section 26

This clause amends section 26 to change to name of the *Long Service Leave (Building and Construction Industry Register of Employers* to the *employers register*.

Clause [1.9] Section 28

This clause amends section 28 to separate the provision relating to the registrar's obligation to register the employer from the process of registering the employer.

Under new section 28 where the register is satisfied that the applicant is an employer the registrar must register the employer. New subsection 28(3) provides that where the registrar is not satisfied that the applicant is an employer the registrar must refuse to register the person as an employer.

New section 28A sets out the information that the registrar must enter into the employers register when registering an employer. This list has been extended to explicitly include the trading name of the person, where applicable the person's ABN, the address of the person's principal place of business and if the person is a corporation the corporations ACN.

Clause [1.10] Part 4 heading

This clause amends the heading for part 4 to replace *employees and contractors* with *workers*.

Clause [1.11] Part 5 heading

This clause amends the heading for part 5 to reflect the new system of quarterly returns and payments.

Clause [1.12] Section 37A

New section 37A simplifies the exception that applies to working directors. Under new section 37A an employer of a working director can apply to the authority for an exemption from payment of an amount payable under section 37AB for work carried out by the working director. The authority must grant the exemption which remains in force for as long as the working director remains a working director and wishes that the exemption applies. The definition of working director has been amended in clause 20.

Clause [1.13] Section 40

New section 40 sets out the information the registrar must enter into the workers register. This has been simplified from the list of information previously found in old section 40.

Clause [1.14] Sections 43 and 44

This clause omits sections 43 and 44. These sections related to a scheme of bonus credits for employees, contractors and apprentices who applied for registration with the scheme within 3 months of the commencement of the original part 4. These workers will retain these bonus credits, however, as the 3 month period is now over the clauses are no longer necessary.

Clause [1.15] Section 45

This clause sets out the circumstances in which the registrar must remove a registration from the workers register. The registrar must remove a person's registration from the register if the person has not been credited with a at least 1 day's service for 4 consecutive years. The effect of this is that the person stops being a registered worker and is not entitled to apply for leave, or payment instead of leave, for any days of service entered onto the register prior to the removal from the register.

New subsection 45(3) clarifies that where the worker would otherwise have been entitled to payment instead of leave (under section 53) prior to be de-registered they maintain that entitlement. This provision was previously found in old subsection 45(4).

New subsection 45(4) provides that registrar not remove a person from the registrar where that person informs the registrar that he or she has ceased building work, but is continuing to work in another capacity in the building and construction industry. New subsection 45(5) sets out the information required in a request by a worker under section 45(4). These provisions were previously located in old subsection 45(3).

New subsection 45(6) sets out the circumstances in which the registrar must re-register a person. Under subsection 45(7) re-registering a person has the effect that their registration had never been removed. These provisions were previously located in old subsections 45(6) and (7).

New subsection 45(8) continues to clarify that section 45 does not affect the right of a de-registered person from again becoming a registered worker.

Clause [1.16] Part 7

This clause clarifies and simplifies Part 7 which sets out the process by which the registrar must issue workers and employers with annual certificates. The changes in the requirements for the certificates reflect the simplified reporting requirements in section 37.

Under new section 46 the registrar is required to give each registered worker a certificate between 31 July and 1 November each year. This certificate is required to record the number of days credited to the worker in the workers register at the end of the previous financial year, the number of days credited in the previous financial year, and where the worker is a contractor the total amounts paid by the contractor.

Under new section 47 the registrar must provide each registered employer with a certificate between 31 July and 1 November each year. The certificate must name each registered employee of the employer and the number of days of service credited to each employee for the period of employment with the employer at the end of the previous financial year, and the number of days of service each employee has been credited in the previous financial year.

New section 48 has been updated and clarified.

Clause [1.17] Section 49 to 51

This clause amends sections 49 to 51 by replacing the phrase *registered employee or registered contractor* with *registered worker*.

Clause [1.18] Sections 55 and 56

This clause simplifies section 55 which sets out the process by which registered employees and registered contractors apply for payment for leave under the BCI Act. The new note for section 55 states that if a form is approved under s65 for an application the form must be used.

New section 56, which sets out the process by which a registered worker can apply for payment instead of leave under the BCI Act, has been updated to use *registered worker* instead of *registered employee or registered contractor* and to include updated references to other sections in the BCI Act.

Clause [1.19] Section 57A

This clause simplifies and updates section 57A which sets out the circumstances where the authority may delete details from the workers register. It also separates the details which the authority must keep.

Clause [1.20] Section 58

This clause inserts a definition for *industry holiday* into section 58. *Industry holiday* means a day which is a holiday for people employed in the building and construction industry. This definition replaces the definition for *award holiday*, previously located in the Dictionary to the BCI Act. This change in terms reflects changes currently

being made to Awards. Section 58 provides that a period of long service leave is extended by one day for each holiday that falls within the period.

Clause [1.21] Sections 59, 59A, 59B and 60

New sections 59 and 59A have been simplified. These sections relate to decisions that are reviewable by the Administrative Appeals Tribunal (AAT).

New section 59 refers to a table in schedule 1 of the BCI Act that sets out which decisions can be appealed to the AAT and the persons who are eligible to apply for the appeal.

New section 59A sets out the requirements that the governing board provide written notice of decisions, listed in schedule 1 to the BCI Act, in accordance with the requirements of the *Administrative Appeals Tribunal Act 1989*.

Section 59B, which sets out the effects of evidentiary certificates signed by, or on behalf of, the registrar, has been simplified. New subsection 59B(1) provides that in proceedings for offences relating to quarterly returns by contractors and employees an evidentiary certificate can state, and will be evidence that, the registrar had, or had not, given an extension of time for the return, or that the person had, or had not provided a return to the authority.

New subsection 59B(2) provides that for offences relating to levy payments by employers and contractors, an evidentiary certificate can state, and will be evidence that a levy was, or was not payable, and that a person did, or did not, pay the levy by a specified date.

Section 60, which provides an entitlement for an employer, a registered worker or someone acting on the employer's or worker's behalf to inspect and be given a copy of an entry in the register that relates to the employer or worker, has been simplified.

Clause [1.22] Sections 62, 63 and 64

Section 62 has been simplified. New section 62 allows the Minister responsible for the Act, based on the recommendation of the governing board, to declare a law of a State (which includes the Northern Territory) to be a corresponding law.

Section 63 has been simplified and renamed. New section 63 provides that where a registered employee is entitled to long service leave under the BCI Act, as well as either or both the *Long Service Leave Act 1976* and a corresponding law, the employee must choose which Act he or she wishes to use and can only access an entitlement under that Act. The employee must make their election in writing to the authority.

Where an employee elects to access their entitlement under the *Long Service Leave Act 1976* or another prescribed Act and his or her employer makes a payment under that Act, the employer can apply to the authority for the **prescribed amount** (determined in accordance with subsections 63(5) and (6)). Where the governing board is satisfied that the amount was properly paid, the authority must pay the employer the prescribed amount, or offset the amount against money owed by the employer to the authority. This remittance reflects the fact that the authority will not

need to make a long service leave payment for the relevant employee because the employer has already done so.

Section 64, which allows the Minister responsible for the Act to enter into agreements with Ministers responsible for corresponding laws, has been simplified.

Clause [1.23] Section 65(1)

This clause removes the phrase *in writing* from section 65(1) as this is redundant.

Clause [1.24] Section 65(2), new note

This clause inserts a new note after subsection 65(2) which explains that others are further provisions about forms in section 255 of the *Legislation Act 1999*.

Clause [1.25] New Schedule 1

This clause inserts a new schedule into the Act. The schedule sets out the decisions that are reviewable by the AAT, and the persons who are eligible to apply for the decisions to be reviewed.

Clause [1.26] Dictionary, note 2, new dot points

This clause inserts two new examples of words defined by the *Legislation Act 1999*.

Clause [1.27] Dictionary, definition of *award holiday*

This clause removes the definition for *award holiday* from the dictionary. This definition has been replaced by the definition of *industry holiday* in section 58.

Clause [1.28] Dictionary, definitions of *building and construction industry, building and construction work, contractor, corresponding law, defined fraction, determination and employee*.

This clause inserts signpost definitions for *building and construction industry, building and construction work, contractor, corresponding law* and *employee*, into the dictionary.

This clause also creates two definitions, depending on the time that service accrued, for *defined fraction* and a definition for *determination* under the Commonwealth *Workplace Relations Act 1996*.

Clause [1.29] Dictionary, definition of *employees and contractors register*

This clause omits the definition of *employees and contractors register* from the dictionary as this term has been replaced by *workers register*.

Clause [1.30] Dictionary, definitions of *employer and employers register*

This clause replaces the full definitions for *employer* and *employers register* with signpost definitions. The full definitions for these terms have been relocated to sections 6 and 26 respectively.

Clause [1.31] Dictionary, definition of *Long Service Leave Act*

This clause removes the dictionary definition of *Long Service Leave Act* as this definition is unnecessary.

Clause [1.32] Dictionary, definition of *ordinary remuneration*

This clause simplifies the phrasing of the definition of *ordinary remuneration*

Clause [1.33] Dictionary, definition of *prescribed retiring age*

This clause removes the definition of *prescribed retiring age* from the dictionary. This definition has been relocated to section 53.

Clause [1.34] Dictionary, definitions of *reciprocal agreement or reciprocal arrangement, reciprocal authority, reciprocating State or Territory, recognised service and registrar*

This clause updates the dictionary definitions of *reciprocal agreement or reciprocal arrangement, reciprocal authority, reciprocating State or Territory, recognised service* and *registrar*. It also removes the definition of *registered* as it is not necessary.

Clause [1.35] Dictionary, definition of *registrar*

This clause replaces the definition of *registrar* with a more detailed definition. The new definition clarifies that the *registrar* is the chief executive officer of the authority within the meaning of the *Financial Management Act 1999*, dictionary, definition of *chief executive officer*.

Clause [1.36] Dictionary, new definition of *registration day*

This clause inserts a signpost definition for *registration day*.

Clause [1.37] Dictionary, definition of *salary or wages*, paragraph (a)

This clause simplifies the language in the definition of *salary or wages*.

Clause [1.38] Dictionary, new definition of *worker and workers register*

This clause inserts new signpost definitions for *worker* and *workers register* as these are new terms in the BCI Act.

Clause [1.39] Long Service Leave (Building and Construction Industry) Act 1981-renumbering

This provision provides that the Act will be renumbered, when it is next republished under the *Legislation Act 1999*.

Part 1.2 Long Service Leave (Contract Cleaning Industry) Act 1999

Clause [1.40] Section 2, notes 1 and 2

This clause updates the references within the notes for section 2.

Clause [1.41] Section 17 heading

This clause amends the heading of section 17 to clarify that it relates to **employers'** premises.

Clause [1.42] Section 19(1)

This clause updates section 19 to include the new heading for section 17.

Clause [1.43] Section 25 heading

This clause replaces the phrase *three-yearly* with *3-yearly*.

Clause [1.44] Section 25(3)

This clause amends subsection 25(3) to reflect the change in terminology from *periodic payments* to *levies*.

Clause [1.45] Section 29

This clause amends section 29, by renaming the *section 29 register* the *employers register*.

Clause [1.46] Section 31(1)(b)

This clause amends section 31(1)(b) to include the amended heading for section 39A.

Clause [1.47] Section 32(2) and (3)

This clause clarifies the language in subsections 32(2) and (3). These sections are otherwise the same.

Clause [1.48] Part 5 heading

This clause amends the heading for Part 5 to reflect the change in terminology from *Periodic notices and payments* to *Quarterly returns and payments*.

Part 5 Quarterly returns and payments

Clause [1.49] Section 39B

This clause updates and clarifies section 39B which sets out the process by which the Minister responsible for the Act can make a determination about the levy payable by employers.

Clause [1.50] Section 41 heading

This clause amends the heading for section 41 to reflect the change in terminology from *payments* to *levy payments*.

Clause [1.51] Parts 6 and 7

This clause updates Part 6 which sets out the details that must be entered in the workers register. New part 6 reflects the change in terminology from *section 36 register* to *workers register*.

Section 43 has been updated to reflect the inclusion of contractors with in the scheme, and to use the new term *worker*.

Section 44 sets out the process by which the governing board can review and vary the ordinary remuneration declared for employees by employers or by contractors. New section 44 has been clarified and updated to reflect the inclusion of contractors within the scheme.

New section 44A has been inserted to separate the requirement to give notice of a decision by the governing board to vary the ordinary remuneration of a worker from the process of making that decision.

New section 44B has been inserted to separate the effect of a decision by the governing board to vary the ordinary remuneration of a worker from the process of

making that decision. Under new subsection 44B(3)(b) an employer can chose to have the amount of any over payment either refunded or credited against future amounts payable.

New section 44C requires that a person who obliged to make an additional payment under sections 44B(3)(a) or (4)(a) must pay that amount within a month after the person receives a notice under section 44A or where the registrar allows additional time, within that time. Failure to meet this requirement is a strict liability offence with a maximum penalty of 20 penalty units.

Section 45 has been updated to include references to *worker*. A new note has also been inserted to refer readers to new sections 38A and 38B which provide for credits for prior service.

Section 46 has been updated to reflect the new name of the *workers register*. New subsection 46(2) has been inserted to allow the governing board to direct the registrar to remove a person's registration from the workers register where the person was registered on the initiative of the authority (under new section 37C) and the governing board is satisfied that the person was not an employee fro the purposes of that direction.

Part 7 has been updated to include the new term *worker*, the new name for the *workers register* and to reflect the inclusion of contractors within the scheme.

Clause [1.52] Section 51(1)

The long service leave formula in section 51(1) has been amended so that the fraction 13/15 is now expressed as a decimal number (0.8667).

Clause [1.53] Section 52

Section 52 has been updated to include references to the new terms *worker* and *workers register*. The section has also been simplified.

Clause [1.54] Sections 55 and 56

Sections 55 and 56 have been updated to reflect the inclusion of contractors within the scheme, and to include the new term *worker*.

Clause [1.55] Section 59

This clause amends section 59 to replace *award holiday* with *industry holiday*. A new definition of *industry holiday* has also been made which includes days that are holidays because of a determination as well as awards and industrial agreements under the *Workplace Relations Act 1996 (Cwth)*. This clause also inserts a new definition for *determination* that includes a variation, suspension, interpretation or cancellation of a determination.

Clause [1.56] Sections 60 to 63

Sections 60-63 have been simplified. These sections relate to decisions that are reviewable by the Administrative Appeals Tribunal (AAT).

New section 60 refers to a table in schedule 1 of the CCI Act that sets out which decisions can be appealed to the AAT and the persons who are eligible to apply for the appeal.

New section 61 sets out the requirements that the governing board provide written notice of decisions, listed in schedule 1 to the CCI Act, in accordance with the requirements of the *Administrative Appeals Tribunal Act 1989*.

Section 62, which sets out the effects of evidentiary certificates signed by, or on behalf of, the registrar, has been simplified. New subsection 62(1) provides that in proceedings for offences relating to quarterly returns by contractors and employees an evidentiary certificate can state, and will be evidence that, the registrar had, or had not, given an extension of time for the return, or that the person had, or had not provided a return to the authority.

New subsection 62(2) provides that for offences relating to levy payments by employers and contractors, an evidentiary certificate can state, and will be evidence that, that a levy was, or was not payable, and that a person did, or did not, pay the levy by a specified date.

New section 63 replaces the words *registered employees* with *registered worker* to reflect the inclusion of contractors within the scheme.

Clause [1.57] Section 64

Section 64 sets out the process by which employees who are entitled to access long service leave under more than one Act. Section 64 has been updated to address situations where an employee is entitled to long service leave under a corresponding law. This will facilitate reciprocal arrangements with other cleaning industry long service leave schemes throughout Australia.

New subsection 64(4) now requires the registrar to keep a record of service credits that are deleted because an employee elects to take long service leave under legislation other than the CCI Act (under subsection 64(3)).

Clause [1.58] Section 64A(1)

This section removes the phrase *in writing* from subsection 64A(1) as that phrase is unnecessary.

Clause [1.59] Section 64A(2), new note

This clause inserts a new note into section 64A which directs readers to section 255 of the *Legislation Act 2001* for more provisions about forms.

Clause [1.60] Schedule 1

This clause replaces Schedule 1 of the Act. Previously Schedule 1 contained examples of calculations for leave payments. These examples are no longer necessary and so have been removed. New Schedule 1 sets out the decisions that are reviewable by the AAT, and the persons who are eligible to apply for the decisions to be reviewed.

Clause [1.61] Dictionary, note 2, new dot points

This clause inserts two new examples into the note 2 for the Dictionary, which alerts the reader that some words are defined in the *Legislation Act 2001*.

Clause [1.62] Dictionary, definitions of *agreement*, *award* and *chair*

This clause removes the definitions of *agreement*, *award* and *chair* as they are no longer necessary.

Clause [1.63] Dictionary, definition of *contract cleaning work*

This clause replaces the definition of *contract cleaning work* with a signpost definition for *contract cleaning industry*.

Clause [1.64] Dictionary, new definition of *contract cleaning industry*

This clause inserts a new signpost definition for *contract cleaning industry*

Clause [1.65] Dictionary, definition of *determination*

This clause removes the definition of *determination* as it is no longer necessary.

Clause [1.66] Dictionary, definitions of *employee* and *employer*

This clause updates the references in the signpost definitions of *employee* and *employer*.

Clause [1.67] Dictionary, new definition of *employers register*

This clause inserts a signpost definition for *employers register*. This definition will replace the definition of *section 29 register*.

Clause [1.68] Dictionary, definition of *long service leave formula*

This clause changes the language in the definition of *long service leave formula* to make it consistent with other signpost definitions.

Clause [1.69] Dictionary, definition of *recognised service*

This clause updates the definition of *recognised service* to include the new term *worker* and the new name of the *workers register*.

Clause [1.70] Dictionary, definition of *registered employer*

This clause simplifies the definition of *registered employer*.

Clause [1.71] Dictionary, definitions of *registrar*

This clause clarifies that the registrar is the chief executive officer of the authority within the meaning of the *financial Management Act 1999*.

Clause [1.72] Dictionary, definitions of *section 29 register* and *section 36 register*

This clause removes the definitions of the *section 29 register* and *section 36 register*. These have been replaced by the *Employers register* and the *workers register* respectively.

Clause [1.73] Dictionary, new definitions of *service* and *workers register*

This clause inserts a new definition for *service* as service in the contract cleaning industry. It also inserts a new signpost definition for *workers register* which replaces the definition for the *section 36 register*.

Clause [1.74] Further amendments, references to *employee*

This clause replaces the term *employee* with *worker* in sections 50, 59,63.

Clause [1.75] Long Service Leave (Contract Cleaning Industry) Act 1999 – renumbering

This clause provides for the Act to be renumbered when the Act is next republished.

Schedule 2 Criminal Code harmonisation

Schedule 2 amends the BCI Act and the CCI Act to make each Act consistent with the Criminal Code.

Part 2.1 Long Service Leave (Building and Construction Industry) Act 1981

Part 2.1 amends the BCI Act.

Clause [2.1] Section 4, note 1

This clause changes note 1 in section 4. This note now states that chapter 2 of the Criminal Code applies to all offences against the BCI Act. Chapter 2 of the Criminal Code sets out the legal principles of criminal responsibility.

Clause [2.2] Section 39

Section 39 sets out the offences where an employer fails to make or keep records for each employee. New section 39 separates, and more clearly defines, the elements of each offence. New subsection 39(3) states that an offence against section 39 is a strict liability offence. This is to clarify the criminal responsibility element of the offence.

Clause [2.3] Section 52

Section 52 sets out the obligations for employers to grant leave to employees who are entitled to leave under the BCI Act. New section 52 separates and more clearly defines the elements of the offences where employers fail to grant leave to employees who are entitled to leave. New subsection 52(4) states that an offence against section 52 is a strict liability offence. This is to clarify the criminal responsibility element of the offence.

Part 2.2 Long Service Leave (Contract Cleaning Industry) Act 1999

This part amends the CCI Act to ensure consistency with the Criminal Code.

Clause [2.4] New section 2B

New section 2B provides that other legislation applies in relation to offences against the CCI Act. New note 1 for section 2B clarifies that chapter 2 of the Criminal Code applies to offences against the CCI Act. Chapter 2 of the Criminal Code sets out the legal principles of criminal responsibility. New note 2 for section 2B clarifies that the *Legislation Act 2001* contains the meaning for penalty units.

Clause [2.5] Section 30

Section 30 sets out the offence where an employer fails to apply to the registrar for registration. New section 30 has been simplified. New subsection 30(2) states that an offence against section 30 is a strict liability offence. This is to clarify the criminal responsibility element of the offence.

Clause [2.6] Section 31(2)

Section 31(2) sets out the offence where the court makes an order against a person under subsection 31(1)(a) and the person does not comply with the order. New section 31(2) more clearly states the elements of the offence. This is to clarify the criminal responsibility element of the offence.

Clause [2.7] Section 39A

Section 39A sets out the offences where a person gives the authority a quarterly return, but does not, at that time, pay the authority the levy amount owing under section 39B. New section 39A has been simplified, and the elements of the offence have been separated and clarified. New subsection 39A(2) states that an offence against section 39A is a strict liability offence. This is to clarify the criminal responsibility element of the offence.

Clause [2.8] Section 42

Section 42 sets out the offences where an employer fails to keep records for each employee. New section 42 has been simplified. New subsection 42(3) states that an offence against section 42 is a strict liability offence. This is to clarify the criminal responsibility element of the offence.

Clause [2.9] Section 53

Section 53 sets out the obligation for an employer to grant long service leave to an employee entitled to that leave under the CCI Act. New section 53 has been simplified and the elements of the offences have been separated and clarified. New subsection 53(4) states that an offence against section 53 is a strict liability offence. This is to clarify the criminal responsibility element of the offence.