

2009

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

LONG SERVICE LEAVE (PORTABLE SCHEMES) BILL 2009

EXPLANATORY STATEMENT

**Presented by
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Minister for Industrial Relations**

Long Service Leave (Portable Schemes) Bill 2009

Overview

Currently, the ACT Construction Industry and the ACT Cleaning Industry Long Service Leave Authorities (the LSL Authorities) are established under the *Long Service Leave (Building and Construction Industry) Act 1981* (the Construction Act) and the *Long Service Leave (Contract Cleaning) Act 1999* (the Cleaning Act).

As part of the 2008-2009 Budget, the Government agreed to the establishment of a portable long service leave scheme for the community sector industry in 2009-2010. The Department of Disability, Health and Community Services is the lead agency for this purpose. The Government also agreed that the existing LSL Authorities would provide for the new administrative arrangements for the community sector scheme.

Both the ACT Construction Industry Long Service Leave Authority and the ACT Cleaning Industry Long Service Leave Authority agreed that the most appropriate model to incorporate any future industry specific portable long service leave scheme was to establish a single integrated ACT Portable Long Service Leave Authority, incorporating the Boards and functions of the ACT Construction Long Service Leave Authority and the ACT Cleaning Industry Long Service Leave Authority.

It has been a long held desire by the LSL Authorities that they merge and amalgamate the common functions of the schemes, including financial and annual reporting and the appointments to and operation of the Governing Board. The Long Service Leave (Portable Schemes) Bill 2009 (the Bill) achieves this and provides greater benefits and outcomes for members by creating administrative savings while maintaining the individual integrity of the specific industry funds.

Administrative arrangements

The administration of the Construction Act and the Cleaning Act is currently the responsibility of the two respective LSL Authorities', however in reality there is only one administrative unit, with one Chief Executive Officer/Registrar and one inspectorate operating with dual appointments under the relevant acts.

The administrative arrangements proposed by the Bill will provide for a single integrated portable long service leave authority, with one governing board for both existing schemes and any future schemes and with all staff, including Chief Executive Officer/Registrar and Deputy Registrar and inspectors, appointed under a single piece of principal legislation.

Under current arrangements the Governing Boards of the LSL Authorities each consist of a Chair, one member representing employers and one member representing employees (three in total). This proposal would see the new single

governing board made up of a minimum of seven members with the capability of increasing the membership with each additional industry covered.

The governing board of the proposed new LSL authority will initially consist of a Chair, one member representing employers and one member representing employees from each covered industry and two additional Ministerial appointments (one as Deputy Chair). This structure would provide the best balance of equity to the membership and ensure an appropriate mix of skills and experience can be brought to the governance of the authority.

In time, subject to the number of industries are approved to have portable long service leave arrangements, Board numbers may need to be rationalised such that not all industries will have specific employer and employee representation.

Financial arrangements

The LSL Authorities are currently also required to maintain separate operations for the purposes of the Boards' secretariats, financial and annual reporting and fund investment. However, once again these requirements are met by the same administrative unit.

The Bill seeks to amalgamate the existing legislation to achieve greater efficiencies in the financial and reporting functions of the schemes including the management and investment of the separate industry funds.

While it is desirable to amalgamate the roles and functions of the operations of the LSL Authorities, the Bill in fact quarantines the assets of each industry's long service leave fund. As a consequence, all industry schemes will maintain the requirement to produce separate financial statements and reporting requirements.

The quarantining of each schemes' assets recognises the historical accumulation of the assets of existing funds and in turn, enables each scheme to set its own long service leave levy relative to the fund's size and performance. At the moment the Construction scheme maintains an estimated \$59 million in assets and a membership of 7,500, while the assets of the Cleaning scheme are estimated at \$4.3 million with a membership of 4,500.

Consultation

Extensive stakeholder consultation has resulted in agreement between both Boards and employer and employee representatives, including all relevant unions that this proposal is in the best interests of the long service leave schemes.

Financial implications

As an independent ACT Statutory Authority, the LSL Authorities' are self-funding and do not rely on the ACT Budget for support. However, the LSL Authorities have confirmed that this proposal does not have financial implications for the funds.

Strict liability offences

The Bill has strict liability offences in clauses 31, 36, 49, 50, 54, 55, 57, 58, 63, 72, schedule 1, clause 1.7 and schedule 2, clause 2.7. The offences incorporating strict liability elements have been carefully considered during the Bill's development. The strict liability offences arise in a regulatory context where for reasons such as public safety, 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 people who owe a duty of care to workers, such as employers, 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 ought to be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time of committing the strict liability offences is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

Long Service Leave (Portable Schemes) Bill 2009

Detail on clauses

Part 1 Preliminary

Clause 1 – Name of Act

This is a technical clause that names the Act. The name of the Act is the *Long Service Leave (Portable Schemes) Act 2009*.

Clause 2 - Commencement

The Act commences on a day fixed by the Minister by written notice.

Clause 3 - Dictionary

This clause establishes that the dictionary at the end of the Long Service Leave (Portable Schemes) Bill 2009 (the Bill) is part of the Bill.

Clause 4 - Notes

This clause establishes that notes in the Bill are explanatory and not part of the Bill.

Clause 5 - Offences against Act—application of Criminal Code etc

This clause establishes that legislation applies in relation to offences against this Bill.

Part 2 Key concepts

Clause 6 - What is a *covered industry*?

This clause provides that a *covered industry*, for the purposes of establishing portable long service leave schemes, is the building and construction industry and the contract cleaning industry.

Clause 7 - Who is an *employer*?

This clause defines an *employer* for a covered industry.

An employer is a person engaged in the industry in the ACT who employs someone else (whether in the ACT or elsewhere) to carry out work in the industry or is declared by the Minister to be an employer for the industry.

A person is also an *employer* for a covered industry if the person engages a *worker* under a contract for services to perform work in the industry and there is no contract to perform the work between the worker and the person for whom the work is performed.

Clause 8 - Who is a *worker*?

This clause provides that a *worker* for a covered industry is an employee for the industry or a contractor for the industry.

An individual may also be declared by the Minister to be an employee or a contractor for a covered industry.

Clause 9 - Who is an *employee*?

This clause provides that an individual is an *employee* for a covered industry if the individual is employed by an employer for the industry (whether in the ACT or elsewhere), or declared by the Minister to be an employee for the industry.

This clause also provides that, for the purposes of this clause, *employed* includes employed as—

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

Clause 10 - Who is a *contractor*?

This clause provides that an individual (other than an employee) is a *contractor* for a covered industry if the individual carries out work in the industry for another person for fee, or reward, on the individual's own account, or, is declared by the Minister to be a contractor for the industry.

Clause 11 - Declarations by Minister—coverage of Act

This clause provides that the Minister may declare, by disallowable instrument, for this Act:

- (a) a person to be an employer for a covered industry; or
- (b) an individual to be a contractor for a covered industry; or
- (c) an individual to be an employee, or an employee of a stated employer, for a covered industry; or
- (d) work, or an activity, to be work in a covered industry.

Clause 12 - What is a *service period*?

This clause provides that a *service period* of a person who is a registered worker for a covered industry starts on the day when the person becomes a worker for an employer for the industry (and is not already a worker for another employer for the industry) and stops on the day when the person stops being a worker for an employer for the industry (and is not a worker for another employer for the industry).

The continuity of the service period of a person is not interrupted by a change of employer provided that person continues to work in the same covered industry.

Clause 13 - When is work outside the ACT *work*?

This clause provides that work carried out by an employee, or by a contractor, outside the ACT is taken to be *work* in a covered industry if the work would, if

carried out in the ACT be work in the covered industry. The employer, or the contractor, must also give the authority a quarterly return in relation to the work and pays the authority the levy payable by the employer or the contractor for that quarter.

Clause 14 - Meaning of *day*

For the purposes of this Bill, *day*, in relation to a worker covered by an award or agreement, has the same meaning as in the award or agreement, or in relation to a worker to whom a Ministerial declaration applies means the period stated in that declaration or, in any other case, 24 hours.

Clause 15 - Meaning of *registration day*

For the purposes of this Bill, *registration day* means the day the application for registration as a worker for a covered industry was received by the registrar' and for a person for whom the Registrar directs to register, the day the direction is given.

For an employer who is registered, *registration day* means the day the application for registration as an employer for a covered industry was received by the registrar.

Part 3 Administration

Division 3.1 The authority, governing board and staff

Clause 16 - Establishment of authority

This clause establishes the Long Service Leave Authority (the *authority*).

Clause 17 - Authority not territory instrumentality etc

This clause provides that the authority is not a territory instrumentality and does not represent the Territory.

Clause 18 - Functions of authority

This clause describes the functions of the authority. These include:

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

Clause 19 - Delegation by authority

This clause provides that the authority may delegate the authority's functions to the registrar or any other public servant.

Clause 20 - Establishment of governing board

This clause establishes a governing board for the authority.

Clause 21 - Governing board members

This clause specifies that the governing board has at least 7 members - , the Chair, 1 member representing employer organisations for each covered industry, 1 member representing employee organisations for each covered industry and two additional Ministerial appointments (one as Deputy Chair).

These members may be appointed for up to a term of 5 years by the Minister.

Clause 22 - Deputy chair

This clause requires the Minister to appoint a member of the governing board as the deputy chair.

Clause 23 - Deputy registrar

This clause allows the chief executive to appoint a public servant to be deputy registrar for the authority.

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

Clause 24 - Functions of governing board

This clause describes the functions of the board. They include:

- (a) making recommendations to the Minister in relation to the rate of levy payable by employers and contractors;
- (b) making recommendations to the Minister in relation to laws to be declared to be corresponding laws; and
- (c) any other function given to the governing board under this Act or another territory Law.

Clause 25 - Arrangements for staff

This clause empowers the chief executive to employ public servants in the administrative unit under the chief executive's control. The *Public Sector Management Act 1994* is to apply to the management of these public servants.

The chief executive means the chief executive of the administrative unit responsible for this clause, who is at the time of writing this explanatory statement, the Chief Executive of the ACT Chief Minister's Department.

Division 3.2 Finances

Clause 26 - Money of authority

This clause defines the money of the authority as money received under clause 51 (Determination of levy—employers) and clause 56 (Determination of levy—contractors), income derived from the investment of money of the authority, amounts borrowed for, and lent to, the authority by the Treasurer under the *Financial Management Act 1996*, section 59 (Borrowing by territory authorities), and any other amounts paid to the authority.

Clause 27 - Application of authority money

This clause sets out the purposes for which the money of the authority can be used. They are:

- (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.

Clause 28 - Authority money—separate funds for covered industries

This clause requires that the authority must establish and keep a separate fund for money of the authority in relation to each covered industry. These funds must be kept and applied in a way that enables the money of the authority that relates to each covered industry to be identified.

Clause 29 - 3-yearly investigation by actuary

This clause specifies that the governing board must appoint an actuary for this Act and that the actuary must conduct an investigation of the state and adequacy of the money of the authority if requested by the board and at least once every 3 years.

This clause then requires the actuary to report the results of the investigation to the governing board and state whether, in the actuary's opinion, any reduction or increase is necessary in the rates of levies payable to the authority by employers or contractors under this Act. The actuary is required to give the Minister a copy of each report under this clause.

Part 4 Registration

Division 4.1 Registration of employers

Clause 30 - Employers registration

This clause requires the authority to keep a register of registered employers for each covered industry (an *employers register*).

Clause 31 - Application for registration by employers

This clause requires an employer for a covered industry to apply to the registrar for registration as an employer for the covered industry not later than 1 month after becoming an employer for the industry or within any additional time the registrar allows. This clause also imposes a penalty of a maximum of 50 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

Clause 32 - Dealing with applications for registration as employer

This clause applies if a person applies to the registrar under clause 31 for registration as an employer for a covered industry. The registrar must register the person as an employer for the industry if satisfied that the person is an employer for the industry, or in any other case, refuse to register the person as an employer for the industry.

Clause 33 - Dealing with applications after end of 1-month period

This clause requires that, if a person applies for registration as an employer, for a covered industry either later than 1 month after becoming an employer or after the end of any additional time allowed by the registrar, the registrar must refer the application to the governing board for a decision.

Clause 34 - Registration as employer

This clause requires the registrar to enter, in the employers register for the industry, the person's name and address; the person's trading name (if any); the person's ABN (if any); the address of the person's principal place of business; if the person is a corporation—the corporation's ACN; the person's registration day as an employer; and any other relevant particulars the governing board reasonably directs.

Clause 35 - Certificate of registration for employers

This clause requires the registrar to give a person registered as an employer for a covered industry a certificate of registration. The certificate is proof that the person was a registered employer on the date stated in the certificate.

Clause 36 - Registered employer to notify change of details

This clause requires an employer to notify the registrar in writing within 7 days, if the details shown on a registered employer's certificate of registration change, and imposes a penalty of a maximum of 5 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

Clause 37 - Appeals against refusal to register as employer

This clause applies if the registrar refuses to register a person as an employer for a covered industry. In that case, the applicant for registration may apply to the governing board for review of the registrar's decision.

The application must be in writing and be made not later than 2 months after the day notice of the decision is received by the applicant. The governing board must give the applicant written notice of the decision not later than 7 days after the day the decision is made.

Clause 38 - Order to apply for registration

This clause provides that if a court convicts a person, or finds the person guilty, of an offence against clause 31 (Application for registration by employers), the court may also order the person to apply to the registrar for registration as an employer for a covered industry within a stated time. The person must also pay the governing board the amount that would have been payable by the person under clause 50 (Levy payments by employers) or clause 55 (Levy payments by contractors) if the person had complied with this Act since becoming an employer.

A person who contravenes an order under this clause commits an offence and a may be subject to a maximum penalty of 100 penalty units, imprisonment for 1 year or both.

Division 4.2 Registration of workers

Clause 39 - Workers register

This clause requires the authority to keep a register of registered workers for each covered industry (a *workers register*).

Clause 40 - Applications for registration by workers

This clause provides that a person may apply to the registrar for registration as a worker for a covered industry.

Clause 41 - Application by employers for registration of employee

This clause provides that an employer may apply to the registrar for registration of a person as a worker for the covered industry on that person's behalf, within 3 months after the day the person starts to work for the employer.

Clause 42 - Dealing with applications for registration as worker

This clause applies if a person applies for registration as a worker for a covered industry either under clause 40; or an employer applies to register a worker for a covered industry under clause 41. Then the registrar must either register or refuse to register the person as a worker for the industry.

Clause 43 - Notice of registrar decisions

This clause requires the registrar to provide to an applicant written notice within 7 days, of the decision to the applicant for registration and for an employer application, the person in relation to whom the application was made.

The written notice must state either the person's registration day or, if the registrar's decision is to refuse to register the person as a worker, an explanation for the decision.

Clause 44 - Registrar may register employee without application

This clause allows the registrar to register a person as a worker if the registrar is satisfied, from information received, that a person is, or was, a worker for a covered industry.

Clause 45 - Appeals against refusal to register as worker

This clause provides that the applicant for registration or for an employer application, the person in relation to whom the application was made may apply to the governing board for a review of the registrar's decision to refuse an application for registration.

After reviewing the decision, the governing board may either confirm the registrar's decision or order that the applicant, or the person for whom the application was made, be registered.

The decision of the governing board and the supporting reasons must be notified, in writing, to the applicant not later than 7 days after the day the decision is made.

Clause 46 - Registration as worker

This clause provides that a person is registered as a worker for a covered industry when the registrar enters the following particulars in the workers register for the industry:

- (a) the person's name, address and date of birth;
- (b) the name and address of the principal place of business of the person's employer (if any);

- (c) the person's registration day as a worker;
- (d) any other relevant particulars the governing board reasonably directs.

Clause 47 - Service credit—employee's prior service

This clause provides that employees are entitled to credit for service in a covered industry for up to 4 years prior to them being registered with the Authority if their employer(s):

- (a) provide a Return to the Authority as proof of this prior service; and
- (b) pay the prescribed levy amount for this prior service.

If the employer is unable to provide the information and/or the payment to the Authority, the Board may grant up to one year's service credit to the employee, if it is satisfied that the employee was working in a covered industry for that period of time.

Clause 48 - Service credit—contractor's prior service

Contractors are entitled to credit for service in a covered industry for up to 1 year prior to them being registered with the Authority if they:

- (a) provide a Return to the Authority as proof of this service (or in the absence of detailed records sufficient for them to complete a Return, the Board is satisfied they undertook work for 1 year); and
- (b) pay the prescribed levy amount for this prior service.

Part 5 Quarterly returns and payments

Clause 49 - Quarterly returns by employers

This clause requires an employer for a covered industry during a quarter to give the authority a return containing the required information not later than 1 month after the end of the quarter, or, the end of any additional time the registrar allows. It also imposes a penalty of a maximum of 20 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

However, the requirement to provide a quarterly return under this clause does not apply in relation to an employee who:

- (a) is not a registered worker for the covered industry; 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.

Clause 50 - Levy payments by employers

This clause requires that a person who is an employer for a covered industry during a quarter when the person gives the authority a return under clause 49, pay the authority the levy payable under clause 51 for the quarter. It also imposes a penalty of a maximum of 20 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

Clause 51 - Determination of levy—employers

This clause allows the Minister, to determine the levy payable by employers for a covered industry on the ordinary remuneration paid, or payable, by employers to employees.

Before making the determination, the Minister must have regard to any recommendation made by the governing board, that must, from time to time, recommend in writing to the Minister the levy that should be payable by employers for a covered industry.

A determination is a disallowable instrument.

Clause 52 - Civil penalty—fail to give quarterly returns etc

This clause applies if an employer for a covered industry fails to give the authority a return in accordance with clause 49 (Quarterly returns by employers); or fails to pay to the authority the levy payable under clause 51.

The employer is liable to pay to the authority \$100 for each month, or part of a month, for each failure.

This clause also provides that if a court finds a person guilty of an offence against clause 49 (Quarterly returns by employers) or clause 50 (Levy payments by employers) (whether or not it convicts the person), the court may, in addition to imposing a penalty on the person, order the person to pay the authority:

- (a) any amount that is payable to the date of the order; and
- (b) for a prosecution for an offence against clause 50, the levy to which the prosecution relates.

Clause 53 - Exemption from levy payments—working directors

This clause allows an individual to apply to the authority for an exemption and, if the governing board is satisfied that the individual is a working director, the governing board must grant the individual's employer an exemption from payment of a levy payable under clause 51 (Determination of levy—employers) for work carried out by the individual.

The individual is taken not to be an employee of the employer under this Act while the exemption is in force.

Clause 54 - Quarterly returns by contractors

This clause requires a registered contractor for a covered industry during a quarter to give the authority a return containing the required information not later than 1 month after the end of the quarter, or the end of any additional time the registrar allows. It also imposes a penalty of a maximum of 20 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

Clause 55 - Levy payments by contractors

This clause requires that a person who is a registered contractor for a covered industry during a quarter must, when the person gives the authority a return under clause 54 (Quarterly returns by contractors), pay to the authority the levy payable under clause 56 (Determination of levy—contractors) for the quarter.

It also imposes a penalty of a maximum of 20 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

Clause 56 – Determination of levy—contractors

This clause allows the Minister to determine the levy payable by registered contractors for a covered industry.

Before making the determination, the Minister must have regard to any recommendation made by the governing board, that must, from time to time, recommend in writing to the Minister the levy that should be payable by registered contractors for a covered industry.

A determination is a disallowable instrument.

Clause 57 - Employers to keep records

This clause requires an employer for a covered industry to keep a written record showing the relevant particulars for each employee who carries out work for the person, and, imposes a penalty of a maximum of 20 penalty units for failure to comply with this clause.

This clause provides that an employer must keep the written record for 6 years after the day the employee stops being employed by the employer, and, imposes a penalty of a maximum of 20 penalty units for failure to comply with this clause.

An offence against this clause is a strict liability offence.

Clause 58 - Registered contractors to keep records

This clause requires a registered contractor for a covered industry to keep a written record of the following:

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

This subclause imposes a penalty of a maximum of 20 penalty units.

This clause requires a registered contractor to keep the written record for 6 years after the day the record is made and imposes a penalty of a maximum of 20 penalty units for failure to comply with this subclause.

An offence against this clause is a strict liability offence.

Part 6 Entries in workers register

Clause 59 – Particulars to be entered in workers register

This clause sets out the particulars to be entered and maintained by the registrar in the workers register for a covered industry for each registered worker in the industry. The particulars are:

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

Clause 60 - Review of ordinary remuneration by governing board

This clause sets out the mechanisms by which the governing board can question the amount of ordinary pay for an employee or contractor. The governing board must give written notice to the employer and the employee or the contractor setting out their rights.

The employer, employee or contractor may write to the governing board within 1 month identifying matters that the person wishes the board to take into consideration and appear before the governing board either in person or by a person appearing on that persons behalf to present that persons case.

The governing board may decide, after consideration of any statement or representations, that the amount of ordinary pay notified is either insufficient or excessive. It can set a different amount as ordinary pay. The governing board must enter that new amount in the worker’s register.

Clause 61 - Notice of governing board decisions on review of ordinary remuneration

This clause requires that the governing board must, not later than 7 days after it makes a decision under clause 60 (5), give written notice of the decision to—

- (a) if the decision relates to a return under clause 49 (Quarterly returns by employers)—the employer who gave the return and the employee; or

- (b) if the decision relates to a return under clause 54 (Quarterly returns by contractors)—the contractor.

If the decision is to fix another amount under clause 60 (5) (b), the notice must include—

- (a) the total ordinary remuneration fixed by the governing board for the quarter; and
- (b) a statement about the effect of clause 62 (Effect of variation of ordinary remuneration) and clause 63 (Variation of ordinary remuneration—payment of additional amounts).

Any governing board decision to fix another amount is a reviewable decision and the board must give a reviewable decision notice to the worker and, if the worker is an employee, the worker's employer.

Clause 62 - Effect of variation of ordinary remuneration

This clause applies if the governing board fixes an amount under clause 60 (5) (b) in relation to a worker. The amount set by the governing board becomes the ordinary pay of the worker, and, if it is greater than the amount in the return supplied by the employer, the employer must pay the governing board the difference. If, on the other hand, the amount set by the governing board is less than the amount stated in the employer's return, the governing board must refund or credit the difference to the employer.

If the varied amount relates to a return by a registered contractor, then, if it is greater than the amount in the return, the contractor must pay the governing board the difference. If, on the other hand, the amount set by the governing board is less than the amount stated in the contractor's return, the governing board must refund or credit the difference to the contractor.

Clause 63 - Variation of ordinary remuneration—payment of additional amounts

This clause applies if the governing board decides to fix an amount as the total ordinary remuneration of a worker and the amount is greater than the amount in the employer's return or the contractor's return. In that case that person must pay the amount not later than:

- (a) 1 month after the day the person receives notice of the governing board's decision; or
- (b) the end of any additional time the registrar allows.

This clause carries a maximum penalty of 20 penalty units.

An offence against this clause is a strict liability offence.

Clause 64 - Service credit—registered worker's service

This clause provides that a registered worker earns service credits at the rate of 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.

Clause 65 - Removing people from workers register

This clause allows the registrar to remove a person from the workers register if the person has not been credited under this Act or a corresponding law with at least 1 day's service for 4 consecutive years.

The date that the worker ceases to be registered is the date the worker is removed from the register. The worker is then unable to claim for payment for, or instead of, long service leave for any period prior to the cessation of registration except if they may be entitled to payment for the period under schedule 1, clause 1.8 (Entitlement to payment instead of leave—building and construction industry) or schedule 2, clause 2.8 (Entitlement to payment instead of leave—contract cleaning industry).

The registrar cannot remove a person from the workers register if the person stops carrying out work to which this Act applies and tells the authority that the person is otherwise employed or engaged in other work until whichever of the following first occurs:

- (a) the person applies to the authority for payment of the total amount for or instead of long service leave;
- (b) the person's employer makes an application under clause 89 (Benefits under other laws—reimbursement of employer) for payment of the total amount to which the employer is entitled;
- (c) if the person is a working director or contractor—the person asks the authority to remove the person from the register;
- (d) the period of 10 years, starting on the day when the person stops carrying out work to which this Act applies, ends.

A working director must state the date when the person became otherwise employed or engaged in work to which this Act applies and the name and address of the principal place of business of the person's employer (if any).

Clause 66 - Re-registration in workers register

This clause allows the governing board to direct the registrar to re-register a person in the workers register if:

- (a) the person has been removed from the register under clause 65; and
- (b) the governing board is satisfied that the person has been credited with a period of service under a corresponding law within the period of 4 years ending on the day when the person was removed from the register.

Part 7 Annual certificates

Clause 67 - Annual certificates for workers

The clause requires the registrar to, as soon as practicable after 31 July and before 1 November each year, give each registered worker a certificate. The certificate must show:

- (a) the number of days of service, from that worker's registration day to the end of the previous financial year, that the worker has been credited with in the workers register;

- (b) the number of days of service the worker has been credited with for the previous financial year;
- (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 contract under clause 56 (Determination of levy—contractors) for the previous financial year.

Clause 68 - Annual certificates for employers

This clause requires the registrar to, as soon as practicable after 31 July and before 1 November each year, give each registered employer a certificate. The certificate must show:

- (a) the name of each registered worker for the employer recorded in the workers register;
- (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
 - ii. the number of days of service that the worker has been credited with for the previous financial year; and
- (c) the total amount paid by the employer under clause 51 (Determination of levy—employers) for the previous financial year.

Clause 69 - Objections to matter stated in annual certificate

This clause allows a worker or an employer to challenge the accuracy of any matter in the certificate within 6 months of the date of the certificate. Any objection must be made in writing to the governing board.

If the governing board allows the objection, it must correct the workers register and give an amended certificate to the person who objected.

Part 8 Enforcement

Clause 70 - Definitions—pt 8

This clause defines the terms used in Part 8.

Clause 71 - Appointment of inspectors

This clause provides that the chief executive may appoint a public servant as an inspector for this Bill.

Clause 72 - Identity cards

This clause requires the chief executive to give an inspector an identity card stating the officer's name and that the officer is an inspector.

The identity card must show—

- (a) a recent photograph of the inspector; and
- (b) the card's date of issue and expiry; and

(c) anything else prescribed by regulation.

An identity card must be returned when an inspector ceases to be an inspector. It is an offence if the person does not return the identity card to the chief executive as soon as practicable (but not later than 7 days) after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

An offence against this clause is a strict liability offence.

An offence is not committed if the person's identity card has been lost, stolen or destroyed by someone other than that person.

Clause 73 - Power to enter premises

This clause contains a general power for inspectors to enter premises. It describes the circumstances in which the power to enter may be exercised, including entry with the consent of the occupier, employee or agent of the occupier of those premises.

Clause 74 - Production of identity card

This clause provides that an inspector must not remain at premises entered under this part if the officer does not produce the officer's identity card when asked to do so by the occupier.

Clause 75 - Consent to entry

This clause sets the requirements for inspectors seeking the occupier's consent to enter premises under subclause 73(1)(c) (Power to enter premises). The inspector must produce an identity card and tell the occupier purpose of the entry, that anything found may be used as evidence, and, that consent may be refused.

An occupier is considered to have given consent by signing a form setting out the details pertaining to the entry.

Clause 76 - General powers on entry to premises

This clause provides inspectors with a number of discretionary powers which can be exercised when they have entered premises under this part. These powers enable inspectors to examine things, make copies, make records, ask questions, obtain information and ask the occupier, or an employee or agent of the occupier of the premises for assistance in doing any of these things. These powers are essential to ensure that inspectors can effectively monitor compliance.

As with all discretions, the discretion afforded by this clause must be exercised in a manner consistent with the rights contained in the *Human Rights Act 2004*.

Put differently, powers given to inspectors under this clause must not be exercised in a manner that would result in a breach or denial of a human right. (see: *Ghaidan v Godin-Mendoza* (2004) 2 AC 557). This obligation is reinforced by clause 40B to the *Human Rights Act*.

Similarly, consistent with the common law rule that legislation should not be construed in a manner that will authorise an abrogation of well-established common law rights, freedoms or privileges, the clause should not be taken to

authorise inspectors to act in manner which would intrude upon a person's common law rights or freedoms (see: *Coco v The Queen* (1994) 179 CLR 427; *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273).

This will mean, for example, that an inspector would not be able to exercise the power in subclauses 76 (1) (b) or (c) to require a person to answer a question where the inspector is aware that the answer would tend to incriminate that person — if they purported to exercise the power in such a manner they would, in effect, be requiring the person to abrogate the privilege against self-incrimination in clause 22(2) (i) of the *Human Rights Act*.

Clause 77 - Damage etc to be minimised

This clause requires inspectors to take all reasonable steps to minimise inconvenience, detriment and damage when exercising powers or functions under the legislation. If damage does occur, the inspector must notify the owner of the thing that has been damaged.

Clause 78 - Compensation for exercise of enforcement powers

This clause enables a person to claim compensation from the Territory for any loss or expenses arising from the exercise, or purported exercise, of functions under this part of the Bill. Any court of competent jurisdiction can determine applications for compensation.

Clause 79 - Enforcement of obligations

This clause enables the registrar to apply to the ACT Civil and Administrative Tribunal (the ACAT) for an order to enforce an obligation imposed under this Act.

The ACAT may make any order it considers appropriate in relation to:

- (b) the registration of an employer or worker;
- (c) the keeping of, and access to, records relating to a worker;
- (d) the recovery of any payment required to be made by an employer; or
- (e) any other matter for the purpose of enforcing an obligation under this Act.

Part 9 Notification and review of decisions

Clause 80 - Definitions—pt 9

This clause defines the terms used in Part 9.

Clause 81 - Reviewable decision notices

This clause provides that, if a decision-maker makes a reviewable decision, the decision-maker must give written notice of the decision to each entity mentioned in schedule 3, column 4 in relation to the decision and to any other person prescribed by regulation.

Clause 82 - Applications for review

This clause provides that an entity mentioned in schedule 3, column 4 in relation to the decision or any other person prescribed by regulation, may apply to the ACAT for review of a reviewable decision.

Part 10 **Miscellaneous**

Clause 83 - Evidentiary certificates

This clause provides that, in a proceeding for an offence against clause 49 (Quarterly returns by employers) or clause 54 (Quarterly returns by contractors), a certificate signed by or on behalf of the registrar to the effect of any of the following is evidence of the matters stated in the certificate:

- (a) that the registrar had, or had not, allowed a stated person an additional stated period to give to the authority a return under a stated clause for a stated quarter;
- (b) that a stated person had, or had not, given to the authority a return under a stated clause for a stated quarter on or before a stated date.

This clause also provides that in a proceeding for an offence against clause 50 (Levy payments by employers) or clause 55 (Levy payments by contractors), a certificate signed by or on behalf of the registrar to the effect of any of the following is evidence of the matters stated in the certificate:

- (a) that a stated amount of levy under a stated clause was, or was not, payable by a stated person for a stated quarter;
- (b) that, on or before a stated date, a stated person had, or had not, paid to the authority, under a stated clause, a stated amount of levy that was payable by the person for a stated quarter.

Clause 84 - Disclosure of information to territory entities and reciprocal authorities

This clause allows the authority to disclose information in relation to an employer's compliance with this Act to a territory entity for the purpose of the exercise by the entity of a function for a territory law.

It also provides that the authority may disclose information in relation to a registered worker's service credits and long service benefits to a reciprocal authority.

In this clause *territory entity* means—

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

Clause 85 - Inspection of register

This clause allows an employer, a registered worker or a person acting on behalf of the employer or worker to inspect, and obtain a certified copy of, an entry in a register that relates to the employer or worker.

Clause 86 - No contracting out by employees

This clause provides that this Bill will have 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 Bill.

Clause 87 - Declaration of corresponding laws

This clause provides that the Minister may, on the recommendation of the governing board, declare a law of a State to be a corresponding law if satisfied that it corresponds, or substantially corresponds, to this Act.

A declaration is a notifiable instrument.

Clause 88 – Benefits under other laws—election

This clause sets out the interaction of benefits under this Bill and those under the *Long Service Leave Act 1976* or any other prescribed law for service in a covered industry. A registered worker who is eligible under this Bill as well as another Act must elect which Act that person will take those benefits and notify the governing board in writing of that election and of the period of service covered.

If a registered worker nominates not to be covered under this Bill, the governing board must remove the employee's credits from the register for the period nominated.

However, the authority must keep a record of the deleted credits.

Clause 89 - Benefits under other laws—reimbursement of employer

This clause applies if a registered worker has made an election under clause 88 (Benefits under other laws—election) and an employer for a covered industry pays the registered worker an amount under a relevant provision.

The employer may then apply to the authority for reimbursement of an amount paid under the relevant provision, less any amount outstanding that is payable by the employer to the authority, if the governing board is satisfied that the amount paid by the employer was correctly paid under the relevant provision.

Clause 90 - Reciprocal agreements for corresponding laws

This clause allows the Minister to enter into an agreement (a *reciprocal agreement*) with the Minister of State who administers a corresponding law in relation to payments of long service leave to people carrying out work in a covered industry in the State. This may include matters relating to payments for, or instead of, long service leave, or the exchange of information about, service credits and entitlements to long service benefits.

Clause 91 - Determination of fees

This clause provides that the Minister may, in writing, determine fees for this Bill.

A determination is a disallowable instrument.

Clause 92 - Approved forms

This clause allows the registrar to approve forms for this Bill, and if approved, must be used for that particular purpose.

An approved form is a notifiable instrument.

Clause 93 - Regulation-making power

This clause provides that the Executive may make regulations for this Bill.

Clause 94 - Legislation amended—sch 4

This clause provides that this Bill amends the legislation mentioned in schedule 4.

Clause 95 - Legislation repealed—sch 5

This clause provides that this Bill repeals the legislation mentioned in schedule 5.

Part 11 Transitional

This Part provides transitional arrangements for the implementation of the authority. In particular, it sets out the process for the transfer of assets and liabilities from the replaced entities to accounts under the authority.

Clause 96 - Definitions—pt 11

This clause defines the terms used in Part 11. They are:

commencement day means the day this Act, section 6 commences.

LSL (BCI) Act means the *Long Service Leave (Building and Construction Industry) Act 1981* (repealed).

LSL (CCI) Act means the *Long Service Leave (Contract Cleaning Industry) Act 1981* (repealed).

replaced entity means—

(a) the Building and Construction Industry Long Service Leave Authority established under the LSL (BCI) Act; or

(b) the Contract Cleaning Industry Long Service Leave Authority established under the LSL (CCI) Act.

Clause 97 - Transitional—rights and liabilities under repealed Acts

This clause applies if, immediately before the commencement day, an entity had a right or liability under a repealed Act. The repeal of the Act does not affect a person's entitlement to payment instead of long service leave, or, affect an amount payable to a registered worker.

Clause 98 - Vesting of assets and liabilities of replaced entities in authority

This clause provides that the assets and liabilities of a replaced entity vests in the authority.

If an asset or liability that vests in the authority is mentioned in a contract, agreement or arrangement, a reference to the replaced entity in the contract, agreement or arrangement is, in relation to anything happening or to happen in relation to the asset or liability after the vesting of the asset or liability in the authority, a reference to the authority.

Clause 99 - Registration of changes in title to certain assets

This clause applies if an asset, including an interest in land, particulars of the ownership of which are required or permitted under Territory law to be entered in a register, vests in the authority under clause 96.

The registering authority must do anything necessary or desirable to be done to reflect the vesting of the asset in the authority.

In this clause:

registering authority means the person who, under Territory law, is required or permitted to enter particulars about the ownership of the asset in a register.

Clause 100 - Proceedings and evidence in relation to vested assets and liabilities

This clause ensures the continuity of any proceedings against the previous entities. The clause makes the authority a party to a civil or administrative proceeding that the previous entities were a party to immediately before the commencement day of this Bill.

This clause also provides that a proceeding that could have been initiated against either of the two entities before the commencement day may be started by or against the authority after the commencement day. Furthermore the clause provides that any evidence that would have been admissible against the two entities continues to be admissible for or against the authority. Any order made in a proceeding by or against either of the two entities before the commencement day may be enforced by or against the authority after the commencement day.

Clause 101 - Transitional—disclosure of information to territory entities and reciprocal authorities

This clause applies to information that a replaced entity could have disclosed under a repealed Act. Under this clause, the authority may still disclose the information:

- (a) for information in relation to an employer's compliance with the repealed Act, to a territory entity for the purpose of the exercise by the entity of a function for a territory law; and
- (b) in relation to a registered worker's service credits and long service benefits to a reciprocal authority, for the purpose of the exercise of a function by:
 - (i) the authority under this Act; or
 - (ii) the reciprocal authority under a corresponding law.

Clause 102 - Transitional—registers

This clause provides that any register kept under the LSL (BCI) Act or the LSL (BCI), is taken, after the commencement day, to be a workers or employers register for the relevant covered industry under this Bill.

Clause 103 - Transitional—amounts to be paid

This clause provides that any amounts that were to be paid to the replaced entities must be paid to the authority. The clause also provides that, if any money was due to be paid out of either of the replaced entities immediately before commencement day, then the amount must be paid by the authority.

Clause 104 - Transitional—inspectors

This clause applies to a person who is appointed as an inspector under the LSL (BCI) Act, section 19 or the LSL (CCI) Act, section 21, and, who was an inspector immediately before commencement day. That person is taken to have been appointed as an inspector under this Bill, clause 71 on the commencement day.

Clause 105 - Transitional—chief executive officer

This clause sets out that the person who, immediately before the commencement day, is the chief executive officer of the replaced entities is taken to be the chief executive officer of the authority as of the commencement day.

Clause 106 - Transitional regulations

This clause allows the making of a regulation to prescribe transitional matters where they are necessary or convenient. The new regulation may modify part 9 of this Bill to make provision for matters that, in the Executive's opinion, are not adequately or appropriately dealt with under this chapter.

Clause 107 - Expiry—pt 11

This clause provides for part 9 to expire two years after the commencement date. Section 88 of the Legislation Act 2001 applies to this part.

Schedule 1 Long service leave payments—building and construction industry

Clause 1.1 - Long service leave—building and construction industry

This clause states that a registered worker for the building and construction industry is entitled to long service leave in accordance with this schedule.

Clause 1.2 - What is *building and construction work*?

This clause sets out that work is *building and construction work* if it is:

Work carried out in the ACT in the building and construction industry:

- (i) to which an award prescribed by regulation relates; or
- (ii) by an employee supervising work carried out in the industry; or

Work, or an activity, declared to be work in the building and construction industry under clause 11.

Clause 1.3 - What is the *building and construction industry*?

This clause sets out what constitutes the *building and construction industry* in the ACT.

By way of example, including but not limited to, constructing, reconstructing, renovating, altering, demolishing or maintaining - buildings, fences or swimming pools, roadworks, railways, airfields and works for the transmission of electric power or wireless or telegraphic communications.

Clause 1.4 - Year of recognised service—building and construction industry

This clause provides that a registered worker for the building and construction industry is taken to have completed a year of service for each 220 days service credited to the worker in the workers register, or, a year of recognised service for each 220 days recognised service credited to the worker.

Clause 1.5 - Long service leave formula—building and construction industry

This clause sets out the *long service leave formula* for the building and construction industry as:

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

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

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

Clause 1.6 - Amount of leave—building and construction industry

This clause provides that a registered worker who has 10 years or more of recognised service is entitled to the number of days of long service leave

worked out in accordance with the long service leave formula for the building and construction industry.

This clause also provides that, in certain circumstances, a registered worker may be entitled to additional long service leave worked out in accordance with the long service leave formula.

Clause 1.7 - Grant of leave by employers—building and construction industry

This clause provides that an employer commits an offence if the employee's long service leave accrues and the employer does not grant that employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

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

An employer of a registered employee also commits an offence if the employer has granted the employee long service leave and the employer does not give the employee a written statement of the day when the long service leave starts and ends no later than 2 months after the day when the long service leave starts or, if the employer and employee agree on a shorter period, before the start of the period agreed.

Maximum penalty: 50 penalty units.

An offence against this clause is a strict liability offence.

In this clause:

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

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

Clause 1.8 - Entitlement to payment instead of leave—building and construction industry

This clause applies to a registered worker for the building and construction industry who has at least 5 years of recognised service if:

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

To a registered worker for the building and construction industry has 55 days recognised service and any of the following apply to the worker:

- (a) the worker has left the industry because of total incapacity;

(b) the worker has reached the prescribed retiring age;

(c) the worker has died; or

To a registered worker for the building and construction industry if:

(a) the worker has 10 years of recognised service in the industry; and

(b) if the worker is an employee—the employee’s employer has told the authority, in writing, that the employer agrees to the making of the payment.

In this clause:

prescribed retiring age means—

(a) in relation to a registered worker who has been granted a service pension under the *Veterans’ Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension), the age at which the worker first receives payment of the service pension; or

(b) in any other case—55 years.

Clause 1.9 - Payment for leave—building and construction industry

This clause sets out that a registered employee who has been granted long service leave under clause 1.7, or a registered contractor for the industry who is entitled to long service leave, may apply to the authority for payment for the leave. If the governing board is satisfied that the applicant is entitled to long service leave under this Bill, then the authority must pay to the applicant the amount payable under clause 1.11 (How are leave payments worked out for the building and construction industry?).

This clause also provides that the authority must pay an applicant any amount payable under this clause no later than 7 days after the applicant becomes entitled to the long service leave, provided that an application is made no later than 14 days before the applicant becomes entitled to long service leave under this Bill.

Clause 1.10 - Payment instead of leave—building and construction industry

This clause provides that if a registered worker for the building and construction industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

However, an application on the ground that the employee has ceased work because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry. The governing board may also require an applicant to submit to a medical examination by a doctor chosen by the board.

If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under clause 1.11 (How are leave payments worked out for the building and construction industry?).

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

For clause 1.9 (Payment for leave—building and construction industry) and clause 1.10 (Payment instead of leave—building and construction industry), the amount payable to a registered worker for, or instead of, long service leave is, for an employee - in accordance with clause 1.12 (Leave payments for service as registered employee—building and construction industry), and, for a contractor - in accordance with clause 1.13 (Leave payments for service as registered contractor—building and construction industry).

Long service leave must be taken in the reverse order in which it accrued and 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.

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

This clause sets out the amount payable to a registered worker for long service leave for service accrued as a registered employee for the building and construction industry under clause 1.11, as being the amount determined using the following formula:

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

In this clause:

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

defined fraction means—

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

designated day means—

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

R is—

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

- (i) the most recent 2 quarters of service as a registered employee before the designated day;

- (ii) the most recent 4 quarters of service as a registered employee before the designated day.

Clause 1.13 - Leave payments for service as registered contractor—building and construction industry

This clause provides that for clause 1.11 (How are leave payments worked out for the building and construction industry?), the amount payable to a registered worker for the building and construction industry for long service leave for service accrued as a contractor is the total of the following for the service:

- (a) amounts paid by the worker to the authority under clause 56 (Determination of levy—contractors);
- (b) interest at the determined rate worked out from the date of receipt of each amount paid under clause 56 until the designated day for the leave.

The governing board must determine an interim rate of interest prior to the determination of the rate under subclause (1).

The determined rate of interest must—

- (a) be worked out after the end of each financial year for the previous financial year; and
- (b) take into account the expenses incurred in administering the authority; and
- (c) be at least 75% of the rate of interest, expressed as a percentage, earned by the authority worked out in accordance with the following formula:

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

In this clause:

designated day—see clause 1.12.

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

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

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

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

Clause 1.14 - Payment by authority on reciprocal authority's behalf—building and construction industry

This clause applies to a registered worker for the building and construction industry who has a long service leave entitlement under this Act and a corresponding law.

The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law and the

authority must make the payment if authorised to do so by the reciprocal authority.

Clause 1.15 - Payments by reciprocal authority on authority's behalf—building and construction industry

This clause applies if, under a corresponding law, a reciprocal authority pays to a person an amount that would have been payable under this Act for work done in the building and construction industry.

When the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount worked out in accordance with the following formula:

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

In this formula:

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

R is the amount decided by the reciprocal authority as the weekly amount payable to the person for the service credited to the person in that State or the Northern Territory.

Clause 1.16 - Prescribed service credit amount—building and construction industry—s 64

This clause provides that the prescribed service credit amount for the building and construction industry is 220 days annually.

Clause 1.17 - Records of payments and service—building and construction industry

This clause provides that, if the authority pays an amount to a registered worker for leave, instead of leave, or, reimburses a reciprocal authority, the authority may delete from the workers register the details relating to the period of service for which the worker has been paid.

However, the authority must keep another record of the period of service, the amount paid to the worker for long service leave, or, instead of long service leave and the period of long service leave (if any) granted to, or taken by, the worker.

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

This clause applies if a public holiday falls during a period of long service leave taken by a registered employee for the building and construction industry. If that is the case, the period of long service leave is increased by 1 day for each public holiday.

Schedule 2 Long service leave payments—contract cleaning industry

Clause 2.1 - Long service leave—contract cleaning industry

This clause states that a registered worker for the contract cleaning industry is entitled to long service leave in accordance with this schedule.

Clause 2.2 - What is *cleaning work*?

This clause provides that work is *cleaning work* if it is:

- (a) work carried out in the ACT that has, as its only or main component, the bringing of premises into, or maintaining premises in, a clean condition; or
- (b) work, or an activity, declared to be work in the contract cleaning industry under clause 11.

Clause 2.3 - What is the *contract cleaning industry*?

This clause provides that the *contract cleaning industry* is:

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

Clause 2.4 - Years of recognised service—contract cleaning industry

This clause provides that a registered worker for the contract cleaning industry is taken to have completed a year of recognised service for each 365 days of recognised service.

Clause 2.5 - Long service leave formula—contract cleaning industry

This clause sets out the *long service leave formula* for the contract cleaning industry:

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

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

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

Clause 2.6 - Amount of leave—contract cleaning industry

This clause provides that a registered worker who has 10 years or more recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the contract cleaning industry.

This clause also provides that in certain circumstances a registered worker may be entitled to additional long service leave worked out in accordance with the long service leave formula.

Clause 2.7 - Grant of leave by employers—contract cleaning industry

This clause provides that an employer commits an offence if the employee's long service leave accrues and the employer does not grant that employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

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

An employer of a registered employee also commits an offence if the employer has granted the employee long service leave and the employer does not give the employee a written statement of the day when the long service leave starts and ends no later than 2 months after the day when the long service leave starts or, if the employer and employee agree on a shorter period, before the start of the period agreed.

Maximum penalty: 50 penalty units.

An offence against this clause is a strict liability offence.

Clause 2.8 - Entitlement to payment instead of leave—contract cleaning industry

This clause applies to a registered worker for the contract cleaning industry who has at least 5 years recognised service if:

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

To a registered worker for the building and construction industry has 55 days recognised service and any of the following apply to the worker:

- (a) the worker has left the industry because of total incapacity;
- (b) the worker has reached the prescribed retiring age;
- (c) the worker has died.

If the governing board is satisfied that clause applies to the worker, the worker is entitled to payment instead of long service leave or the number of weeks long service leave worked out in accordance with the formula.

Clause 2.9 - Payments for leave—contract cleaning industry

This clause sets out that a registered employee who has been granted long service leave under clause 2.7, or a registered contractor for the industry who is entitled to long service leave, may apply to the authority for payment for the leave. If the governing board is satisfied that the applicant is entitled to long service leave under this Bill, then the authority must pay to the applicant the amount payable under clause 2.11 (How are leave payments worked out for the contract cleaning industry?).

This clause also provides that the authority must pay an applicant any amount payable under this clause no later than 7 days after the applicant becomes

entitled to the long service leave, provided that an application is made no later than 14 days before the applicant becomes entitled to long service leave under this Bill.

Clause 2.10 - Payments instead of leave—contract cleaning industry

This clause provides that, if a registered worker for the contract cleaning industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

However, an application on the ground that the employee has ceased work because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry. The governing board may also require an applicant to submit to a medical examination by a doctor chosen by the board.

If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under clause 2.11 (How are leave payments worked out for the building and construction industry?).

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

For clause 2.9 (Payment for leave—building and construction industry) and clause 2.10 (Payment instead of leave—building and construction industry), the amount payable to a registered worker for, or instead of, long service leave is, for an employee - in accordance with clause 2.12 (Leave payments for service as registered employee—contract cleaning industry) and, for a contractor - in accordance with clause 2.13 (Leave payments for service as registered employee—contract cleaning industry).

Long service leave must be taken in the reverse order in which it accrued and 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 was accrued.

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

This clause sets out the amount payable to a registered worker for long service leave for service accrued as a registered employee for the contract cleaning industry under clause 2.11, as the amount worked out as follows:

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

In this formula:

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

designated day means—

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

R is the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:

- (a) the most recent 2 quarters of service as a registered worker before the designated day;
- (b) the most recent 4 quarters of service as a registered worker before the designated day;
- (c) the most recent 20 quarters of service as a registered worker before the designated day;
- (d) the most recent 40 quarters of service as a registered worker before the designated day.

Clause 2.13 - Leave payments for service as registered contractor—contract cleaning industry

This clause provides that for clause 2.11 (How are leave payments worked out for the contract cleaning industry?), the amount payable to a registered worker for the building and construction industry for long service leave, for service accrued as a contractor, is the total of the following for the service:

- (a) any amounts paid by the worker to the authority under clause 56 (Determination of levy—contractors);
- (b) interest at the determined rate worked out from the date of receipt of each amount paid under clause 56 until the designated day for the leave.

The governing board must determine an interim rate of interest prior to the determination of the rate above.

The determined rate of interest must—

- (a) be worked out after the end of each financial year for the previous financial year; and
- (b) take into account the expenses incurred in administering the authority; and
- (c) be at least 75% of the rate of interest, expressed as a percentage, earned by the authority worked out in accordance with the following formula:

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

In this clause:

designated day means:

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

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

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

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

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

Clause 2.14 - Payments by authority on reciprocal authority's behalf—contract cleaning industry

This clause applies to a registered worker for the contract cleaning industry who has a long service leave entitlement under this Act and under a corresponding law.

The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law and the authority must make the payment if authorised to do so by the reciprocal authority.

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

This clause applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, that would have been payable under this Act for work done in the contract cleaning industry.

When the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount to be worked out as follows:

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

For the formula:

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

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

Clause 2.16 - Service credit amount—contract cleaning industry—s 64

This clause provides that the prescribed service amount for the contract cleaning industry is 365 days annually.

Clause 2.17 - Records of payments and service—contract cleaning industry

This clause provides that if the authority pays an amount to a registered worker for leave, in-lieu of leave or reimburses a reciprocal authority, the authority may delete from the workers register the details relating to the period of service for which the worker has been paid.

However, the authority must keep another record of the period of service, the amount paid to the worker for long service leave or in-lieu of long service leave and the period of long service leave (if any) granted to or taken by the worker.

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

This clause applies if a public holiday falls during a period of long service leave taken by a registered employee for the building and construction industry. If that is the case, the period of long service leave is increased by 1 day for each public holiday.

Schedule 3 Reviewable decisions

This schedule sets out in a table the decisions made by the relevant decision-maker (either the registrar or the governing board) as well as the persons who may apply to the ACAT for a review of the decision by the relevant decision-maker.

Schedule 4 Consequential amendments

This schedule inserts amendments to other ACT legislation and is consequential to this Bill.

Part 4.1 *Financial Management Act 1996*

[4.1] - Section 54 (1)

omit

Cleaning Industry Long Service Leave Authority

Construction Industry Long Service Leave Authority

substitute

Long Service Leave Authority

[4.2] - Section 76

omit

Cleaning Industry Long Service Leave Authority

Construction Industry Long Service Leave Authority

substitute

Long Service Leave Authority

Part 4.2 *Long Service Leave Act 1976*

[4.3] - Section 2D (1) (a)

substitute

(a) was registered under the LSL (BCI) Act; and

[4.4] - Section 2E (1) (a)

substitute

(a) was registered under the LSL (CCI) Act; and

[4.5] - New section 2EA

insert

2EA Benefits under this Act and LSL (PS) Act

- (1) This section applies to an employee who—
 - (a) is registered under the LSL (PS) Act; and
 - (b) has elected under that Act to take long service leave benefits under that Act for a period stated by the employee.
- (2) The employee's election does not prevent the employee from receiving benefits under this Act.
- (3) However, the employee is not entitled to a benefit under this Act for a period for which the employee received a benefit under the LSL (PS) Act.
- (4) In this section:

LSL (PS) Act means the *Long Service Leave (Portable Schemes) Act 2009*.

Schedule 5 Legislation repealed

Clause 5.1 - Legislation repealed

This clause sets out the Acts, regulations and legislative instruments that will be repealed on the commencement of this Bill. They are:

Acts repealed

- *Long Service Leave (Building and Construction Industry) Act 1981* (A1981-23)
- *Long Service Leave (Contract Cleaning Industry) Act 1999* (A1999-85).

Regulation repealed

The *Long Service (Building and Construction Industry) Regulation 1984* (SL1984-8) is repealed.

All other legislative instruments under the following Acts are repealed:

- *Long Service Leave (Building and Construction Industry) Act 1981* (A1981-23)
- *Long Service Leave (Contract Cleaning Industry) Act 1999* (A1999-85).

Dictionary

The Dictionary defines terms used in the Bill.