



Australian Capital Territory

Long Service Leave (Portable Schemes) Act 2009

A2009-25

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Australian Capital Territory

Long Service Leave (Portable Schemes) Act 2009

A2009-25

An Act to provide for the portability of long service entitlements in certain industries, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Long Service Leave (Portable Schemes) Act 2009*.

2 Commencement

This Act commences on 1 January 2010.

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

3 Dictionary

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

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

For example, the signpost definition '*reviewable decision*, for part 9 (Notification and review of decisions)—see section 80.' means that the term 'reviewable decision' is defined in that section for part 9.

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Key concepts

6 What is a *covered industry*?

Each of the following is a *covered industry*:

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

Note 1 Building and construction industry—see sch 1, s 1.3.

Note 2 Contract cleaning industry—see sch 2, s 2.3.

7 Who is an *employer*?

- (1) An *employer*, for a covered industry, is a person engaged in the industry in the ACT who—
 - (a) employs someone else (whether in the ACT or elsewhere) to carry out work in the industry; or
 - (b) is declared to be an employer for the industry under section 11 (Declarations by Minister—coverage of Act).
- (2) Also, a person is an *employer* for a covered industry if—
 - (a) the person engages someone else (the *worker*) under a contract for services to perform work in the industry for a person mentioned in subsection (1); and
 - (b) there is no contract to perform the work between the worker and the person for whom the work is performed.

Note This section does not make an employment agent the employer of those for whom the agency finds work if the workers are engaged directly by the person for whom the work is to be performed.
- (3) However, the following are not *employers*:
 - (a) the Territory;

- (b) the Commonwealth;
- (c) the Australian National University;
- (d) the University of Canberra;
- (e) for a stated covered industry—a person prescribed in the covered industry schedule for the covered industry;
- (f) a person prescribed by regulation.

Note **Covered industry schedule**—see the dictionary.

8 **Who is a worker?**

Each of the following is a **worker** for a covered industry:

- (a) an employee for the industry;
- (b) a contractor for the industry.

Note An individual may be declared by the Minister to be an employee or a contractor for a covered industry (see s 11).

9 **Who is an employee?**

- (1) An individual is an **employee** for a covered industry if the individual is—
 - (a) employed by an employer for the industry (whether in the ACT or elsewhere); or
 - (b) declared to be an employee for the industry under section 11.
- (2) In this section:
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.

Note For this Act, an individual declared to be an employee of a stated employer is taken to be employed by the employer (see s 11 (2)).

10 Who is a *contractor*?

An individual (other than an employee) is a *contractor* for a covered industry if the individual—

(a) carries out work in the industry for another person for fee or reward on the individual's own account; or

(b) is declared to be a contractor for the industry under section 11.

11 Declarations by Minister—coverage of Act

(1) The Minister may declare, 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.

(2) An individual declared to be an employee of a stated employer is taken to be employed by the employer.

(3) A declaration is a disallowable instrument.

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

12 What is a *service period*?

- (1) A *service period* of a person who is a registered worker for a covered industry is a period—
 - (a) starting 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
 - (b) stopping on the day when the person next stops being a worker for an employer for the industry (and is not a worker for another employer for the industry).
- (2) For subsection (1), the continuity of the service period of a person who stops being a worker for an employer for the covered industry, but on the next day becomes a worker for another employer for the industry, is not interrupted by the change of employer.
- (3) For subsection (1), a person stops being an employee for an employer for the covered industry (the *former employer*) if, for the employee's next service period (the *later period*)—
 - (a) any return under section 49 (Quarterly returns by employers) by the former employer shows no ordinary remuneration for the employee in the later period; or
 - (b) if the employee had 2 or more employers for the industry for the later period—no return under section 49 by any former employer shows any ordinary remuneration for the employee in the later period.
- (4) Despite subsection (1), a registered worker's service period is taken to include any day when the worker does not carry out work because—
 - (a) of incapacity for an injury for which the worker is entitled to compensation under the *Workers Compensation Act 1951* by an employer; or

- (b) if the worker is an employee—the employee has not been dismissed by an employer to ensure that the employee does not take long service leave while in the employer’s employment; or
 - (c) if the worker is a contractor—the contractor’s engagement by the employer is ended to ensure that the contractor does not take long service leave while engaged by the employer.
- (5) For this section, a person is taken to become a worker on the person’s registration day as a worker.

Note **Registration day**—see s 15.

13 When is work outside the ACT work?

- (1) Work carried out by an employee 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 and the employer—
- (a) gives the authority a quarterly return under section 49 (Quarterly returns by employers) in relation to the work; and
 - (b) pays the authority the levy payable by the employer under section 50 (Levy payments by employers) for the quarter.
- (2) Work carried out 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 industry and the contractor—
- (a) gives the authority a quarterly return under section 54 (Quarterly returns by contractors) in relation to the work; and
 - (b) pays the authority the levy payable by the contractor under section 55 (Levy payments by contractors) for the quarter.

Note 1 Work, or an activity, may be declared to be work in a covered industry (see s 11).

Note 2 **Building and construction work**—see sch 1, s 1.3.

Note 3 **Cleaning work**—see sch 2, s 2.2.

14 Meaning of *day*

- (1) In this Act:

day—

- (a) in relation to a worker covered by an award or agreement—has the same meaning as in the award or agreement; or
 - (b) in relation to a worker to whom a declaration under subsection (2) applies—means the period stated in the declaration; or
 - (c) in any other case—means 24 hours.
- (2) For this Act, the Minister may declare a stated period to be a day for a worker unless the work is covered by an award.
- (3) A declaration is a notifiable instrument.

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

15 Meaning of *registration day*

In this Act:

registration day—

- (a) for a worker who applies to be registered under section 40—means the day the application for registration as a worker for a covered industry was received by the registrar; and
- (b) for a person for whom a direction is made under section 45 (3) (b)—means the day the direction is given; and
- (c) for an employer who is registered—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

Note The governance of territory authorities, including the Long Service Leave Authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

16 Establishment of authority

The Long Service Leave Authority (the *authority*) is established.

17 Authority not territory instrumentality etc

The authority is not a territory instrumentality and does not represent the Territory.

18 Functions of authority

- (1) The authority has the following functions:
 - (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.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

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

19 Delegation by authority

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

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

20 Establishment of governing board

The authority has a governing board.

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

21 Governing board members

- (1) The governing board has at least 3 members and not more than 7 members.

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

Note 2 The chief executive officer of the authority is appointed by the governing board after consulting with the responsible minister (see *Financial Management Act 1996*, s 80 (2)).

Note 3 The registrar is a member of the governing board and is the chief executive officer of the authority (see dict, def *registrar* and *Financial Management Act 1996*, s 80 (4)).

- (2) The governing board must have the following members:
- (a) at least 1 member appointed to represent employer organisations for the covered industries;
 - (b) at least 1 member appointed to represent employee organisations for the covered industries;

(c) at least 1 other member who is not appointed to represent an employer or employee organisation.

Note One of the members mentioned in par (c) is the deputy chair (see s 22).

- (3) In appointing the members for subsection (2) (a) and (b), the Minister must, as far as reasonably practicable, ensure that there is equal representation for employer organisations and employee organisations.
- (4) The chair of the governing board must not be a member mentioned in subsection (2) (a) or (b).
- (5) A member of the governing board must not be appointed for a term longer than 5 years.

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

- (6) The Minister may, under the Legislation Act, section 209, appoint a person to act as a member.
- (7) The registrar is a non-voting member of the governing board.

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

22 Deputy chair

The Minister must appoint a member of the governing board mentioned in section 21 (2) (c) as the deputy chair.

Note A deputy chair is appointed under the *Financial Management Act 1996*, s 79.

23 Deputy registrar

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

Note 1 The registrar is the chief executive officer of the authority (see dict, def **registrar** and *Financial Management Act 1996*, s 80 (4)).

Note 2 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 3 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

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

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

24 Functions of governing board

The governing board has the following functions:

- (a) making recommendations to the Minister under section 51 (Determination of levy—employers) and section 56 (Determination of levy—contractors);
- (b) recommending to the Minister laws to be declared to be corresponding laws under section 87 (Declaration of corresponding laws);
- (c) any other function given to the governing board under this Act or another territory law.

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

25 Arrangements for staff

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

Note The chief executive means the chief executive of the administrative unit responsible for this section (see Legislation Act, s 163 (References to a chief executive or the chief executive)). Administrative units are established under the administrative arrangements (see *Public Sector Management Act 1994*, s 13).

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

Division 3.2 Finances

26 Money of authority

The money of the authority consists of—

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

27 Application of authority money

The money of the authority must be applied only—

- (a) in payment or discharge of the costs, expenses or other obligations of the authority under this Act; or

- (b) in payment of remuneration and allowances payable to anyone appointed or employed under this Act.

28 Authority money—separate funds for covered industries

- (1) The authority must establish and keep a separate fund for money of the authority in relation to each covered industry.
- (2) The money of the authority must be kept and applied in a way that enables the money of the authority that relates to each covered industry to be separately identified.

29 3-yearly investigation by actuary

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

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

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

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

- (2) The actuary must conduct an investigation of the state and adequacy of the money of the authority—
 - (a) if asked by the governing board; and
 - (b) at least once every 3 years.
- (3) The actuary must 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.
- (4) The actuary must give the Minister a copy of each report under this section.

Part 4 Registration

Division 4.1 Registration of employers

30 Employers registration

The authority must keep a register of registered employers for each covered industry (an *employers register*).

31 Application for registration by employers

- (1) An employer for a covered industry must apply to the registrar for registration as an employer for the covered industry not later than—
 - (a) 1 month after becoming an employer for the industry; or
 - (b) the end of any additional time the registrar allows.

Maximum penalty: 50 penalty units.

Note 1 Under this part, applications may be made, and notice may be given, electronically in certain circumstances (see *Electronic Transactions Act 2001*).

Note 2 If a form is approved under s 92 for an application, the form must be used.

- (2) An offence against this section is a strict liability offence.
- (3) The registrar may allow additional time for subsection (1) before or after the end of the 1-month period mentioned in subsection (1) (a).

32 Dealing with applications for registration as employer

- (1) This section applies if a person applies to the registrar under section 31 for registration as an employer for a covered industry.
- (2) The registrar must—
 - (a) register the person as an employer for the industry if satisfied the person is an employer for the industry; or

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

33 Dealing with applications after end of 1-month period

- (1) This section applies if a person applies to the registrar for registration as an employer for a covered industry later than 1 month after becoming an employer and after the end of any additional time allowed by the registrar under section 31 (1) (b).
- (2) The registrar must refer the application to the governing board.
- (3) The governing board must direct the registrar to register the person as an employer for a covered industry if satisfied that—
 - (a) the person is an employer in the covered industry; and
 - (b) the person has paid to the authority all the amounts that would have been payable by the person under section 50 (Levy payments by employers) if the person had complied with this Act since becoming an employer.
- (4) The governing board must direct the registrar to refuse to register the person as an employer for a covered industry if not satisfied of a matter mentioned in subsection (3).
- (5) The registrar must give effect to a direction under subsection (3) or (4).

34 Registration as employer

A person is registered as an employer for a covered industry when the registrar enters the following particulars in the employers register for the industry:

- (a) the person's name and address;
- (b) the person's trading name (if any);
- (c) the person's ABN (if any);

- (d) the address of the person's principal place of business;
- (e) if the person is a corporation—the corporation's ACN;
- (f) the person's registration day as an employer;
- (g) any other relevant particulars the governing board reasonably directs.

Note **Registration day**—see s 15.

35 Certificate of registration for employers

- (1) The registrar must give a person registered as an employer for a covered industry a certificate of registration that includes—
 - (a) the registration particulars mentioned in section 34; and
 - (b) the person's registration day.

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

Note 2 **Registration day**—see s 15.

Note 3 If a form is approved under s 92 for a certificate, the form must be used.

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

Note A fee may be determined under s 91 for this provision.

- (3) An employer's certificate of registration is evidence of the matters stated in the certificate.

36 Registered employer to notify change of details

- (1) If the details shown on a registered employer's certificate of registration change, the employer must, not later than 7 days after the day the change happens—
 - (a) tell the registrar, in writing, of the change; and

(b) return the certificate to the registrar.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) The registrar must give the employer an amended certificate of registration.

37 Appeals against refusal to register as employer

- (1) This section applies if the registrar refuses to register a person as an employer under section 32 (Dealing with applications for registration as employer).
- (2) The applicant for registration may apply to the governing board for review of the registrar's decision.

Note If a form is approved under s 92 for an application, the form must be used.

- (3) 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.
- (4) If an application is made under subsection (2), the governing board must—
 - (a) if satisfied that the person to whom the application relates is an employer for a covered industry—direct the registrar to register the person as an employer for the covered industry; or
 - (b) in any other case—confirm the registrar's decision to refuse registration.
- (5) The governing board must give the applicant written notice of the decision not later than 7 days after the day the decision is made.

Note For how documents may be given, see the Legislation Act, pt 19.5.

38 Order to apply for registration

- (1) If a court convicts a person, or finds the person guilty, of an offence against section 31 (Application for registration by employers), the court may, in addition to imposing a penalty on the person, order the person to—
 - (a) apply to the registrar for registration as an employer for a covered industry within a stated time; and
 - (b) pay the governing board the amount that would have been payable by the person under section 50 (Levy payments by employers) or section 55 (Levy payments by contractors) if the person had complied with this Act since becoming an employer.
- (2) A person who contravenes an order under subsection (1) commits an offence.

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

Division 4.2 Registration of workers

39 Workers register

The authority must keep a register of registered workers for each covered industry (a *workers register*).

40 Applications for registration by workers

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

Note If a form is approved under s 92 for an application, the form must be used.

41 Application by employers for registration of employee

- (1) This section applies if a person—
 - (a) is an employee of an employer for a covered industry; and
 - (b) is not registered under this Act; and
 - (c) does not apply for registration under section 40 before the end of 3 months after the day the person starts to work for the employer.
- (2) The employer may apply to the registrar for registration of the person as a worker for the covered industry at any time after the end of the 3-month period.

Note If a form is approved under s 92 for an application, the form must be used.

42 Dealing with applications for registration as worker

- (1) This section applies if—
 - (a) a person applies under section 40 for registration as a worker for a covered industry; or
 - (b) an employer applies under section 41 for the registration of a person as a worker for a covered industry.
- (2) The registrar must—
 - (a) if satisfied that the person is a worker for the covered industry—register the person as a worker for the industry; or
 - (b) in any other case—refuse to register the person as a worker for the industry.

43 Notice of registrar decisions

- (1) The registrar must, not later than 7 days after making a decision under section 42, give written notice of the decision to—
 - (a) the applicant for registration; and

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

Note For how documents may be given, see the Legislation Act, pt 19.5.

- (2) If the registrar’s decision is to register the person as a worker for a covered industry, the notice must state the person’s registration day.
- (3) If the registrar’s decision is to refuse to register the person as a worker, the notice must include—
 - (a) an explanation for the decision; and
 - (b) a statement of the effect of section 45.

44 Registrar may register employee without application

The registrar may register a person as a worker if—

- (a) the registrar becomes aware of information (other than because of an application under section 40) indicating that a person is, or was, a worker for a covered industry; and
- (b) the registrar is satisfied that the employee should be registered as a worker for the industry.

Example

a return under s 49 shows the person as an employee for a covered industry

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

45 Appeals against refusal to register as worker

- (1) This section applies if the registrar refuses to register a person as a worker for a covered industry under section 42 (Dealing with applications for registration as worker).
- (2) The following people may apply to the governing board for review of the registrar’s decision:
 - (a) the applicant for registration;

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

Note If a form is approved under s 92 for this provision, the form must be used.

- (3) If an application is made under subsection (2), the governing board must—
- (a) confirm the registrar’s decision to refuse registration; or
 - (b) direct the registrar to register the person as a worker.
- (4) The governing board must give the person written notice of the decision not later than 7 days after the day the decision is made.

46 Registration as worker

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.

Note **Registration day**—see s 15.

47 Service credit—employee’s prior service

- (1) The governing board may credit an employee who is registered as a worker for a covered industry with 1 day’s service in the workers register for the covered industry for each day in the 4-year period before the person’s registration day the person was employed in the relevant covered industry if the person’s employer has given the authority, in relation to the person—
 - (a) a return under section 49 (Quarterly returns by employers); and
 - (b) payment under section 51 (Determination of levy—employers).
- (2) If subsection (1) does not apply, the governing board may credit the person with 1 day’s service in the workers register for the covered industry for each day in the 1-year period before the person’s registration day for which the board is satisfied that the person was employed in the covered industry.

Example

The governing board is satisfied that Joe, in the 1-year period before his registration day, had separate periods of service as an employee in the contract cleaning industry of 25 and 125 days. The governing board may credit Joe in the workers register with 150 days service.

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

48 Service credit—contractor’s prior service

The governing board may credit a contractor who is registered as a worker for a covered industry with 1 day’s service in the workers register for the covered industry for each day in the 1-year period before the person’s registration day for which—

- (a) either—
 - (i) the person worked as a contractor in the covered industry and for which the person has a record of the particulars mentioned in section 58 (1) (Registered contractors to keep records) for the person’s service as a contractor; or
 - (ii) if subparagraph (i) does not apply—the board is satisfied that the person worked as a contractor in the covered industry; and
- (b) the person pays to the authority the amount determined under section 56 (Determination of levy—contractors) in relation to the person.

Part 5 Quarterly returns and payments

49 Quarterly returns by employers

- (1) A person who is an employer for a covered industry during a quarter must give the authority a return containing the required information not later than—
 - (a) 1 month after the end of the quarter; or
 - (b) the end of any additional time the registrar allows.

Maximum penalty: 20 penalty units.

Note If a form is approved under s 92 for a return, the form must be used.

- (2) Subsection (1) does not apply in relation to an employee who—
 - (a) is not a registered worker 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.
- (3) An offence against this section is a strict liability offence.
- (4) The registrar may allow additional time for subsection (1) before or after the end of the 1-month period mentioned in subsection (1) (a).
- (5) In this section:

required information, for an employer for a quarter, means—

 - (a) the name of each of the employer's workers who carried out work for the employer during the quarter; and

- (b) for each of the employer's workers—
 - (i) the total ordinary remuneration paid or payable by the employer to the worker for work during the quarter; and
 - (ii) the number of weekdays, or part weekdays, during the quarter to which the remuneration relates; and
- (c) anything else prescribed by regulation.

50 Levy payments by employers

- (1) A person who is an employer for a covered industry during a quarter must, when the person gives the authority a return under section 49, pay the authority the levy payable under section 51 for the quarter.

Maximum penalty: 20 penalty units.

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

51 Determination of levy—employers

- (1) The Minister may determine the levy payable by employers for a covered industry on the ordinary remuneration paid or payable by employers to employees.

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

- (2) The governing board must, from time to time, recommend in writing to the Minister the levy that should be payable by employers for a covered industry.
- (3) Before making a determination, the Minister must have regard to any recommendation made under subsection (2), but need not follow it.

- (4) A determination is a disallowable instrument.

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

52 Civil penalty—fail to give quarterly returns etc

- (1) This section applies if an employer for a covered industry fails to—
- (a) give the authority a return in accordance with section 49 (Quarterly returns by employers); or
 - (b) pay the authority the levy payable under section 51.
- (2) The employer is liable to pay to the authority \$100 for each month, or part of a month, for each failure under subsection (1).

Example—liability

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

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

- (3) The registrar may, on application by the person or on the registrar's own initiative, remit all or part of an amount payable under subsection (2) if satisfied that—
- (a) the circumstances that gave rise to the failure were not caused either directly or indirectly by the person; or
 - (b) because of special circumstances, it would be fair and reasonable to remit.

- (4) If a court finds a person guilty of an offence against section 49 (Quarterly returns by employers) or section 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 under subsection (2) to the date of the order; and
 - (b) for a prosecution for an offence against section 50—the levy to which the prosecution relates.

53 Exemption from levy payments—working directors

- (1) This section applies if an individual applies to the authority for an exemption under this section.
- (2) 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 section 51 (Determination of levy—employers) for work carried out by the individual.

Note If a form is approved under s 92 for an application, the form must be used.

- (3) The exemption is in force until whichever of the following first occurs:
- (a) the individual stops being a working director other than because he or she ceases to carry out work;
 - (b) the individual tells the authority in writing that the individual no longer wishes the exemption to apply in relation to him or her.
- (4) The individual is taken not to be an employee of the employer under this Act while the exemption is in force.

54 Quarterly returns by contractors

- (1) A person who is a registered contractor for a covered industry during a quarter must give the authority a return containing the required information not later than—
 - (a) 1 month after the end of the quarter; or
 - (b) the end of any additional time the registrar allows.

Note If a form is approved under s 92 for a return, the form must be used.

- (2) The registrar may allow a registered contractor additional time to give the authority a return under subsection (1) before or after the end of the 1-month period mentioned in subsection (1) (a).
- (3) In this section:

required information, for a registered contractor for a covered industry, means—

- (a) the number of weekdays, or part weekdays, during the quarter on which the contractor carried out work in the covered industry; and
- (b) the contractor's total ordinary remuneration for the work during the quarter; and
- (c) anything else prescribed by regulation.

55 Levy payments by contractors

A person who is a registered contractor for a covered industry during a quarter must, when the person gives the authority a return under section 54, pay to the authority the levy payable under section 56 for the quarter.

56 Determination of levy—contractors

- (1) The Minister may determine the levy payable by registered contractors for a covered industry.

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

- (2) The governing board must, from time to time, recommend in writing to the Minister the levy that should be payable by registered contractors for a covered industry.
- (3) Before making a determination, the Minister must have regard to any recommendation made under subsection (2), but need not follow it.
- (4) A determination is a disallowable instrument.

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

57 Employers to keep records

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

- (4) In this section:

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

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

58 Registered contractors to keep records

- (1) A registered contractor for a covered industry must 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.

Maximum penalty: 20 penalty units.

- (2) A registered contractor must keep the written record for 6 years after the day the record is made.

Maximum penalty: 20 penalty units.

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

Part 6 Entries in workers register

59 Particulars to be entered in workers register

The registrar must enter the following particulars in the workers register for a covered industry for each registered worker in the industry:

- (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;
- (h) any other relevant particulars the governing board reasonably directs.

60 Review of ordinary remuneration by governing board

- (1) This section applies if the governing board considers that the total ordinary remuneration for a worker stated in a return given to the authority under section 49 (Quarterly returns by employers) or section 54 (Quarterly returns by contractors) for a quarter is insufficient or excessive because of the nature of the work carried out by the worker in the quarter.
- (2) The governing board must give the following people a notice that summarises the person's rights under subsection (3):
 - (a) for a return under section 49—the employer who submitted the return and the employee;
 - (b) for a return under section 54—the contractor.
- (3) Not later than 1 month after being given the notice a person mentioned in subsection (2) may ask the governing board to—
 - (a) take into account any matter set out in writing; and
 - (b) arrange for the person to appear before the governing board (including by a representative) and make representations about the matter.
- (4) If asked under subsection (3) (b), the governing board must arrange for the person to appear before the governing board as soon as practicable.
- (5) After considering any representations under subsection (3), the governing board may—
 - (a) agree that the total ordinary remuneration stated in the return for the quarter is reasonable; or
 - (b) fix another amount as the total ordinary remuneration of the worker for the quarter.

61 Notice of governing board decisions on review of ordinary remuneration

- (1) The governing board must, not later than 7 days after it makes a decision under section 60 (5), give written notice of the decision to—
 - (a) if the decision relates to a return under section 49 (Quarterly returns by employers)—the employer who gave the return and the employee; or
 - (b) if the decision relates to a return under section 54 (Quarterly returns by contractors)—the contractor.
- (2) If the decision is to fix another amount under section 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 section 62 and section 63 (Variation of ordinary remuneration—payment of additional amounts).

Note The governing board's decision to fix another amount under s 60 (5) (b) is a reviewable decision (see s 80, def *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 (see s 81).

62 Effect of variation of ordinary remuneration

- (1) This section applies if the governing board fixes an amount (the *varied amount*) under section 60 (5) (b) in relation to a worker.
- (2) The varied amount is taken, for this Act, to be the worker's total ordinary remuneration for work by the worker for the quarter.

- (3) The following provisions apply if the varied amount relates to a return under section 49 (Quarterly returns by employers) by an employer of a registered employee:
- (a) if the varied amount is more than the amount (the *returned amount*) shown in the return as the total ordinary remuneration of the employee, the employer must pay the authority the additional amount payable under section 51 (Determination of levy—employers) for the employee for the quarter;
 - (b) if the varied amount is less than the returned amount, the authority must—
 - (i) if asked by the employer to refund the overpayment of the levy payable under section 51—refund the overpayment; or
 - (ii) in any other case—credit the overpayment against future amounts payable under section 51 by the employer.
- (4) The following provisions apply if the varied amount relates to a return under section 54 (Quarterly returns by contractors) by a registered contractor:
- (a) if the varied amount is more than the amount (the *returned amount*) shown in the return as the total ordinary remuneration of the contractor, the contractor must pay the authority the additional amount payable under section 56 (Determination of levy—contractors) for the contractor for the quarter;
 - (b) if the varied amount is less than the returned amount, the authority must—
 - (i) if asked by the contractor to refund the overpayment of the levy payable under section 56—refund the overpayment; or
 - (ii) in any other case—credit the amount against future amounts payable under section 56 by the contractor.

63 Variation of ordinary remuneration—payment of additional amounts

- (1) This section applies if—
 - (a) the governing board decides to fix an amount as the total ordinary remuneration of a worker under section 60 (5) (b); and
 - (b) because the governing board has fixed the amount a person must pay an amount under section 62 (3) (a) or (4) (a).
- (2) The person must pay the amount not later than—
 - (a) 1 month after the day the person receives notice under section 61 of the governing board’s decision; or
 - (b) the end of any additional time the registrar allows.

Maximum penalty: 20 penalty units.
- (3) An offence against this section is a strict liability offence.
- (4) The registrar may allow a person additional time to pay the amount under subsection (2) before or after the end of the 1-month period mentioned in subsection (2) (a).

64 Service credit—registered worker’s service

Service to be credited in the workers register for a registered worker for a covered industry is the amount of service worked out under the covered industry schedule for the covered industry.

65 Removing people from workers register

- (1) The registrar must 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.

- (2) If the person is removed under subsection (1)—
- (a) the person stops being a registered worker on the day the person is removed; and
 - (b) the person is not entitled to apply for, or to be paid an amount for or instead of, long service leave for any days of service entered in the register before the day the person stopped being a registered worker.
- (3) However, subsection (2) (b) does not apply if the person would, but for the person ceasing to be registered, have been entitled to payment for the period under schedule 1, section 1.8 (Entitlement to payment instead of leave—building and construction industry) or schedule 2, section 2.8 (Entitlement to payment instead of leave—contract cleaning industry).
- (4) The registrar must not 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 section 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.

- (5) A request under subsection (4) (c) must state—
- (a) the date when the person became otherwise employed or engaged in work to which this Act applies; and
 - (b) the name and address of the principal place of business of the person's employer (if any).

66 Re-registration in workers register

- (1) The governing board must direct the registrar to re-register a person in the workers register if—
- (a) the person has been removed from the register under section 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.
- (2) If a person is re-registered under subsection (1), this Act applies in relation to the person as if the person had not been removed from the register.
- (3) This section does not affect any right that a person who has been removed from the workers register may have to again become a registered worker.

Part 7 Annual certificates

67 Annual certificates for workers

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

- (a) the number of days of service, from the worker's registration day to the end of the previous financial year, that the worker has been credited with in the workers register; and
- (b) the number of days of service the worker has been credited with for the previous financial year; and
- (c) the total ordinary remuneration paid to the worker during the previous financial year by a registered employer; and
- (d) if the worker is a contractor—the total amount paid by the contract under section 56 (Determination of levy—contractors) for the previous financial year.

68 Annual certificates for employers

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

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

- (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 section 51 (Determination of levy—employers) for the previous financial year.

69 Objections to matter stated in annual certificate

- (1) A person who is given a certificate under section 67 (Annual certificates for workers) or section 68 may object to the governing board about the accuracy of a matter stated in the certificate.
- (2) An objection must be made in writing within 6 months after the day the certificate is given to the person objecting.

Note For how documents may be given, see the Legislation Act, pt 19.5.

- (3) If an objection is made, the governing board must decide the objection and must, if the board allows the objection—
 - (a) make any necessary correction in the workers register; and
 - (b) give an amended certificate to the person who objected.

Part 8 Enforcement

70 Definitions—pt 8

In this part:

at premises includes in or on the premises.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

71 Appointment of inspectors

The chief executive may appoint a public servant as an inspector for this Act.

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

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

72 Identity cards

- (1) The chief executive must give an inspector an identity card stating the officer's name and that the officer is an inspector.
- (2) 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.

- (3) A person commits an offence if—
- (a) the person stops being an inspector; and
 - (b) the person does not return the person's 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.

- (4) Subsection (3) does not apply to a person if the person's identity card has been—
- (a) lost or stolen; or
 - (b) destroyed by someone other than the person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

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

73 Power to enter premises

- (1) For this Act, an inspector may—
- (a) at any reasonable time, enter premises that the inspector believes on reasonable grounds is a workplace; or
 - (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or
 - (c) at any time, enter premises with the occupier's consent.

Note **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) However, subsection (1) (a) or (b) does not authorise entry into a part of premises that is being used only for residential purposes.

- (3) An inspector may, without the consent of the occupier of premises, enter land that is around, or part of, the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) For subsection (1) (a) and (b), the inspector may enter the premises with any necessary assistance and force.
- (6) However, only a police officer may use force against a person.

74 Production of identity card

An inspector must not remain at premises entered under this part if the inspector does not produce the inspector's identity card when asked by the occupier.

75 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter the premises under section 73 (1) (c) (Power to enter premises), an inspector must—
 - (a) produce the inspector's identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and

- (ii) that anything found under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
- (b) that the occupier consented to the entry; and
- (c) stating the time and date consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that an occupier did not consent to entry to premises by the inspector under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

76 General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) inspect or examine;
 - (b) require the occupier, or an employee or agent of the occupier, to give the inspector records, or copies of records, that the occupier, employee or agent has, or has access to, that are reasonably required by the inspector for this Act;
 - (c) require the occupier, or an employee or agent of the occupier, to give the inspector reasonable assistance to exercise a power under this part.

Example—par (a)

A list of employers and contractors working at the premises.

Example—par (b)

An inspector is conducting an inspection at a construction site. The inspector forms the view that relevant documents are held at the head office of the company operating the construction site. A person at the premises may be required to produce the documents that are held at the head office.

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

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

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

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (b) or (c).

Maximum penalty: 50 penalty units.

77 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take reasonable steps to ensure that the inspector, and anyone assisting the inspector, causes as little inconvenience, detriment and damage as practicable.
- (2) If an inspector, or anyone assisting an inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person the inspector believes on reasonable grounds is the owner of the thing.

- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

78 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector or anyone assisting an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

79 Enforcement of obligations

- (1) The registrar may apply to the ACAT for an order to enforce an obligation imposed under this Act.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (2) The ACAT may make any order it considers appropriate in relation to—
- (a) the registration of an employer or worker; or
 - (b) the keeping of, and access to, records relating to a worker; or
 - (c) the recovery of any payment required to be made by an employer; or
 - (d) any other matter for the purpose of enforcing an obligation under this Act.

Part 9 Notification and review of decisions

80 Definitions—pt 9

In this part:

decision-maker, for a reviewable decision, means a decision-maker mentioned in schedule 3, column 5 for the decision.

reviewable decision means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

81 Reviewable decision notices

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice only to—

- (a) each entity mentioned in schedule 3, column 4 in relation to the decision; and
- (b) any other person prescribed by regulation.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

82 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 3, column 4 in relation to the decision;
- (b) any other person prescribed by regulation.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 10 Miscellaneous

83 Evidentiary certificates

- (1) In a proceeding for an offence against section 49 (Quarterly returns by employers) or section 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 section for a stated quarter;
 - (b) that a stated person had, or had not, given to the authority a return under a stated section for a stated quarter on or before a stated date.
- (2) In a proceeding for an offence against section 50 (Levy payments by employers) or section 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 section 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 section, a stated amount of levy that was payable by the person for a stated quarter.

84 Disclosure of information to territory entities and reciprocal authorities

- (1) The authority may disclose information—
 - (a) 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; 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.

(2) In this section:

territory entity means—

(a) the chief executive of an administrative unit; or

(b) the chief executive officer of a territory authority.

Note *Administrative unit* and *territory authority* are defined in the Legislation Act, dictionary, pt 1.

85 Inspection of register

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

86 No contracting out by employees

This 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.

87 Declaration of corresponding laws

(1) 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.

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

(2) A declaration is a notifiable instrument.

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

88 Benefits under other laws—election

- (1) A registered employee must elect the law under which long service leave benefits are to be taken if the employee is eligible for long service benefits under this Act and any of the following laws:
 - (a) the *Long Service Leave Act 1976*;
 - (b) a corresponding law;
 - (c) a law prescribed by regulation for employment in the contract cleaning industry.
- (2) If a registered employee makes an election under subsection (1), the employee must tell the authority in writing the nature of the election and the service period for which the election is made.
- (3) If a registered employee elects to take long service benefits under a law mentioned in subsection (1) (a), (b) or (c), the authority must remove from the relevant workers register the employee's credits for the service period.
- (4) However, the authority must keep a record of the deleted credits.

89 Benefits under other laws—reimbursement of employer

- (1) This section applies if—
 - (a) a registered worker has made an election under section 88; and
 - (b) an employer for a covered industry pays the registered worker an amount under a relevant provision.
- (2) The employer may 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—
 - (a) an application is made to the authority; and
 - (b) the governing board is satisfied that the amount paid by the employer was properly paid under the relevant provision.

- (3) In this section:

relevant provision means—

- (a) the *Long Service Leave Act 1976*, section 8 (Manner of payment for leave); or
- (b) a law prescribed by regulation.

90 Reciprocal agreements for corresponding laws

- (1) The Minister may 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.

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

- (2) Without limiting subsection (1), the agreement may make provision in relation to—
- (a) payments for, or instead of, long service leave; and
 - (b) the exchange of information about service credits and entitlements to long service benefits between the authority and the reciprocal authority under the corresponding law; and
 - (c) anything else in relation to long service benefits that the Minister considers appropriate.

91 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

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

92 Approved forms

- (1) The registrar may approve forms for this Act.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

93 Regulation-making power

The Executive may make regulations for this Act.

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

94 Legislation amended—sch 4

This Act amends the legislation mentioned in schedule 4.

95 Legislation repealed—sch 5

This Act repeals the legislation mentioned in schedule 5.

Part 11 Transitional

96 Definitions—pt 11

In this part:

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 1999* (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.

97 Transitional—rights and liabilities under repealed Acts

- (1) This section applies if, immediately before the commencement day, an entity had a right or liability under a repealed Act.

Examples

- 1 a person's entitlement to payment instead of long service leave
- 2 an amount payable to a registered worker

Note 1 *Entity* includes an unincorporated body and a person.

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

- (2) The repeal of the Act does not affect the right or liability.
- (3) The right or liability continues, subject to this Act, as if it were a right or liability under this Act.

- (4) In this section:

repealed Act means the LSL (BCI) Act or the LSL (CCI) Act.

98 Vesting of assets and liabilities of replaced entities in authority

- (1) The assets and liabilities of a replaced entity vests in the authority.
- (2) 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.

99 Registration of changes in title to certain assets

- (1) This section 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 section 96.
- (2) The registering authority must do anything necessary or desirable to be done to reflect the vesting of the asset in the authority.
- (3) In this section:
- 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.

100 Proceedings and evidence in relation to vested assets and liabilities

- (1) This section applies in relation to an asset or liability that vests in the authority under section 96.

- (2) If a proceeding had been started in relation to the asset or liability before it vested in the authority and a replaced entity is a party to the proceeding, the authority is substituted for the replaced entity as a party to the proceeding.
- (3) If a proceeding could have been started by or against the replaced entity in relation to the asset or liability before it vested in the authority, the proceeding may be started by or against the authority.
- (4) The court or other entity in which a proceeding is started or continued by or against the authority in relation to the asset or liability may give directions about the conduct of the proceeding.
- (5) Any evidence that would have been admissible for or against the replaced entity in the proceeding is admissible for or against the authority.
- (6) In this section:

proceeding includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*) or any other civil proceeding.

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

- (1) This section applies to information that a replaced entity could disclose under a repealed Act.
- (2) The authority may 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.

(3) In this section:

repealed Act means the LSL (BCI) Act or the LSL (CCI) Act.

territory entity means—

(a) the chief executive of an administrative unit; or

(b) the chief executive officer of a territory authority.

Note *Administrative unit* and *territory authority* are defined in the Legislation Act, dictionary, pt 1.

102 Transitional—registers

- (1) A register kept under the LSL (BCI) Act, section 30 is taken, after the commencement day, to be an employers register for the building and construction industry under this Act, section 30.
- (2) A register kept under the LSL (BCI) Act, section 36 is taken, after the commencement day, to be a workers register for the building and construction industry under this Act, section 39.
- (3) A register kept under the LSL (CCI) Act, section 32 is taken, after the commencement day, to be an employers register for the contract cleaning industry under this Act, section 30.
- (4) A register kept under the LSL (CCI) Act, section 40 is taken, after the commencement day, to be a workers register for the contract cleaning industry under this Act, section 39.

103 Transitional—amounts to be paid

- (1) If, immediately before the commencement day, an amount was payable to, or was to be received by the Building and Construction Industry Long Service Leave Authority established under the LSL (BCI) Act, as money of the authority within the meaning of that Act, section 27, the amount is payable to, or may be received by, the authority under this Act.

- (2) If, immediately before the commencement day, an amount was payable to, or was to be received by the Cleaning Industry Long Service Leave Authority established under the LSL (CCI) Act, as money of the authority within the meaning of that Act, section 29, the amount is payable to, or may be received by, the authority under this Act.
- (3) If, immediately before the commencement day, an amount was required to be, or was to be, applied under the LSL (BCI) Act, section 28 the amount is to be applied, or may applied, from the money of the authority.
- (4) If, immediately before the commencement day, an amount was required to be, or was to be, applied under the LSL (CCI) Act, section 30 the amount is to be applied, or may be applied, from the money of the authority.

104 Transitional—inspectors

- (1) This section applies to a person—
 - (a) appointed as an inspector under the LSL (BCI) Act, section 19 or the LSL (CCI) Act, section 21; and
 - (b) who was an inspector immediately before the commencement day.
- (2) The person is taken to have been appointed as an inspector under this Act, section 71.

105 Transitional—chief executive officer

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.

Note The registrar is the chief executive officer of the authority (see dict, def **registrar** and *Financial Management Act 1996*, s 80 (4)).

106 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

107 Expiry—pt 11

- (1) This part expires 2 years after the day it commences.
- (2) This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Note Transitional provisions are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

Schedule 1 Long service leave payments— building and construction industry

(see s 6)

1.1 Long service leave—building and construction industry

A registered worker for the building and construction industry is entitled to long service leave in accordance with this schedule.

1.2 What is *building and construction work*?

Work is *building and construction work* if it is—

- (a) 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
- (b) work, or an activity, declared to be work in the building and construction industry under section 11.

1.3 What is the *building and construction industry*?

- (1) The *building and construction industry* is—
 - (a) in relation to the ACT—the industry of constructing, reconstructing, renovating, altering, demolishing or maintaining the following:
 - (i) buildings, fences or swimming pools;
 - (ii) roadworks, railways, airfields or other works for the carriage of people, animals or vehicles;

- (iii) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of a harbour, river or watercourse for the purpose of navigation;
 - (iv) works for the storage or supply of water or the irrigation of land;
 - (v) works for the carriage, treatment or disposal of sewage or the effluent from any premises;
 - (vi) bridges, viaducts, aqueducts, tunnels or pipelines;
 - (vii) chimneystacks, cooling towers, drilling rigs, gas holders or silos;
 - (viii) structures, fixtures or works for use in any building or works mentioned in subparagraphs (i) to (vii);
 - (ix) navigational lights, beacons or markers;
 - (x) works for the drainage of land;
 - (xi) works for the storage of liquids (other than water) or gases;
 - (xii) works for the transmission of electric power or wireless or telegraphic communications; and
- (b) in relation to a reciprocating State—the building and construction industry within the meaning of the corresponding law of the State.

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

- (2) Also, the ***building and construction industry***, in relation to the ACT, includes the following for building or other works mentioned in subsection (1) (a):
- (a) pile driving and site preparation;
 - (b) installing data cabling or security or electronic communication systems;

- (c) laying floor coverings;
- (d) hard landscaping.

1.4 Year of recognised service—building and construction industry

A registered worker for the building and construction industry is taken to have completed—

- (a) a year of service for each 220 days service credited to the worker in the workers register; and
- (b) a year of recognised service for each 220 days recognised service credited to the worker.

1.5 Long service leave formula—building and construction industry

The following is the *long service leave formula* for the building and construction industry:

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

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

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

1.6 Amount of leave—building and construction industry

- (1) A registered worker for the building and construction industry 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 building and construction industry.

- (2) A registered worker for the building and construction industry is entitled to additional long service leave worked out in accordance with the long service leave formula for the building and construction industry if the worker—
- (a) becomes entitled to long service leave under this Act for work done in the industry; and
 - (b) is credited in the workers register with an additional period of service in the industry commencing on the date on which the worker became entitled to the long service leave.

1.7 Grant of leave by employers—building and construction industry

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

Maximum penalty: 50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.
- (3) The employer of a registered employee for the building and construction industry commits an offence if—
- (a) the employer has granted the employee long service leave; and
 - (b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—
 - (i) not later than 2 months after the day when the long service leave starts; or

- (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

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

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.

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

- (1) This section applies to a registered worker for the building and construction 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.
- (2) This section applies also if 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.
- (3) Further, this section applies to a registered worker for the building and construction industry if—
- (a) the worker has 10 years 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.
- (4) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave credited to the worker in the workers register.
- (5) In this section:
- 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.

1.9 Payment for leave—building and construction industry

- (1) A registered employee for the building and construction industry who has been granted long service leave under section 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.

Note If a form is approved under s 92 for an application, the form must be used.

- (2) If the governing board is satisfied that the applicant is entitled to long service leave under this Act for work done in the building and construction industry, the authority must pay to the applicant the amount payable under section 1.11 (How are leave payments worked out for the building and construction industry?).
- (3) The authority must pay an applicant any amount payable under subsection (2) not later than 7 days after the applicant becomes entitled to the long service leave if—
 - (a) the application is made not later than 14 days before the applicant becomes entitled to long service leave under this Act; and
 - (b) the applicant asks in the application for the amount to be paid.

1.10 Payment instead of leave—building and construction industry

- (1) 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.

Note If a form is approved under s 92 for an application, the form must be used.

- (2) An application by a registered employee for the building and construction industry on the ground that the employee has ceased work in the building and construction industry 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.
- (3) The governing board may require an applicant mentioned in subsection (2) to submit himself or herself to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.

- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse, to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) 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 section 1.11 (How are leave payments worked out for the building and construction industry?).

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

- (1) For section 1.9 (Payment for leave—building and construction industry) and section 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—
 - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 1.12; and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 1.13.
- (2) For subsection (1)—
 - (a) long service leave must be taken in the reverse order in which it accrued; and

- (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

Example

John has 10 years of service in the building and construction industry giving him an entitlement to 13 weeks long service leave. He first worked in the industry as a registered employee and accrued 7 weeks of the entitlement in that capacity. John then worked as a registered contractor and accrued 6 weeks of the entitlement in that capacity.

John decides to take 9 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under section 1.12 where ‘D’ is 1540 (ie it took 1540 days service as a registered employee to accrue the first 7 weeks of his long service leave entitlement);
- the amount calculated under section 1.13 which is the total of the amounts paid to authority under section 56 for his first 2.6 years work as a registered contractor (ie it took that period of service as a registered contractor to accrue the next 2 weeks of his long service leave entitlement) and the interest under section 1.13 on those amounts.

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

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

- (1) For section 1.11, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the building and construction industry is the amount worked out as follows:

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

- (2) In this section:

D means the number of days 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.

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

- (1) For section 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 section 56 (Determination of levy—contractors);
 - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.
- (2) The governing board must determine an interim rate of interest from time to time prior to the determination of the rate under subsection (1).
- (3) 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 as follows:

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

- (4) In this section:
designated day—see section 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.

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

- (1) This section 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.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.

Note If a form is approved under s 92 for an application, the form must be used.

- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

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

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the building and construction industry.

- (2) If 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 as follows:

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

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.
- (4) In subsection (2):

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.

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.

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 the State.

1.16 Service credit—building and construction industry—s 64

A registered worker for the building and construction industry must not, in a financial year, be credited with more than 220 days of service.

1.17 Records of payments and service—building and construction industry

- (1) This section applies if the authority—
 - (a) pays an amount to a registered worker for the building and construction industry under section 1.9 (Payment for leave—building and construction industry) or section 1.10 (Payment instead of leave—building and construction industry); or
 - (b) reimburses a reciprocal authority under section 1.15 (2) (Payments by reciprocal authority on authority’s behalf—building and construction industry) for an amount paid to a registered worker for the industry.
- (2) The authority may delete from the workers register the details relating to the period of service for which the worker has been paid.
- (3) However, the authority must keep another record of—
 - (a) the period of service; and
 - (b) the amount paid to the worker for long service leave or instead of long service leave; and
 - (c) the period of long service leave (if any) granted to or taken by the worker.

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

- (1) This section applies if a public holiday falls during a period of long service leave taken by a registered employee for the building and construction industry.
- (2) The period of long service leave is increased by 1 day for each public holiday.

Schedule 2 Long service leave payments— contract cleaning industry

(see s 6)

2.1 Long service leave—contract cleaning industry

A registered worker for the contract cleaning industry is entitled to long service leave in accordance with this schedule.

2.2 What is *cleaning work*?

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 section 11.

2.3 What is the *contract cleaning industry*?

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—the contract cleaning industry within the meaning of the corresponding law of the State.

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

2.4 Years of recognised service—contract cleaning industry

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.

2.5 Long service leave formula—contract cleaning industry

The following is 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 recognised service.

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

2.6 Amount of leave—contract cleaning industry

- (1) A registered worker for the contract cleaning industry 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.
- (2) A registered worker for the contract cleaning industry is entitled to long service leave for additional days of service worked out in accordance with the long service leave formula if the worker—
 - (a) becomes entitled to long service leave under this Act; and
 - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.

2.7 Grant of leave by employers—contract cleaning industry

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

Maximum penalty: 50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.
- (3) The employer of a registered employee for the contract cleaning industry commits an offence if—
 - (a) the employer has granted the employee long service leave; and
 - (b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—
 - (i) 2 months before the day when the long service leave starts; or
 - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

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

prescribed period, for long service leave accrued by a registered employee for the contract cleaning 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.

2.8 Entitlement to payment instead of leave—contract cleaning industry

- (1) This section applies to a registered worker for the contract cleaning industry who has 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.
- (2) This section applies also if a registered worker for the contract cleaning 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.
- (3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the number of weeks long service leave worked out in accordance with the long service leave formula.
- (4) In this section:
- prescribed retiring age* means—
- (a) for 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.

2.9 Payments for leave—contract cleaning industry

- (1) A registered employee for the contract cleaning industry who has been granted long service leave under section 2.7, or a registered contractor who for the industry is entitled to long service leave, may apply to the authority for payment for the leave.

Note If a form is approved under s 92 for an application, the form must be used.

- (2) If the governing board is satisfied that the applicant is entitled to long service leave under this Act, the authority must pay to the applicant the amount payable under section 2.11 (How are leave payments worked out for the contract cleaning industry?).
- (3) The authority must pay an applicant any amount payable under subsection (2) 7 days after the day the applicant becomes entitled to the long service leave if—
 - (a) the application is made 14 days before the applicant becomes entitled to long service leave under this Act; and
 - (b) the applicant asks in the application for the amount to be paid.

2.10 Payments instead of leave—contract cleaning industry

- (1) 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.

Note If a form is approved under s 92 for an application, the form must be used.

- (2) An application by a registered employee for the contract cleaning industry on the ground that the employee has ceased work in the contract cleaning industry 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.
- (3) The governing board may require an applicant mentioned in subsection (2) to submit himself or herself to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.

- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse, to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) 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 section 2.11.

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

- (1) For section 2.9 (Payments for leave—contract cleaning industry) and section 2.10 (Payments instead of leave—contract cleaning industry), the amount payable to a registered worker for, or instead of, long service leave is—
 - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 2.12; and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 2.13.
- (2) For subsection (1)—
 - (a) long service leave must be taken in the reverse order in which it accrued; and

- (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

Example

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

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

- the amount calculated under s 2.12 where ‘D’ is 1825 (ie it took 1825 days service as a registered employee to accrue the first 5 weeks of her long service leave entitlement);
- the amount calculated under s 2.13 which is the total of the amounts paid to the authority under s 57 for her first 2.41 years work as a registered contractor (ie it took that period of service as a registered contractor to accrue the next 2 weeks of her long service leave entitlement) and the interest under s 2.13 on those amounts.

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

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

- (1) For section 2.11, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the contract cleaning industry is the amount worked out as follows:

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

- (2) In this section:

D means the number of days 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.

Example—*R*

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

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

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

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

- (1) For section 2.11 (How are leave payments worked out for the contract cleaning industry?), the amount payable to a registered worker for the contract cleaning industry for long service leave for service accrued as a registered contractor is the total of the following for the service:
 - (a) amounts paid by the worker to the authority under section 56 (Determination of levy—contractors);
 - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.
- (2) The governing board must determine an interim rate of interest from time to time before the determination of the rate under subsection (1).
- (3) 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 as follows:

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

- (4) In this section:

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.

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

- (1) This section applies to a registered worker for the contract cleaning industry who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.

Note If a form is approved under s 92 for an application, the form must be used.

- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

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

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the contract cleaning industry.
- (2) If 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 as follows:

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

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.
- (4) In subsection (2):

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.

2.16 Service credit—contract cleaning industry—s 64

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

Example

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

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

- (2) However a registered worker for the contract cleaning industry must not, in a financial year, be credited with more than 365 days of service.

2.17 Records of payments and service—contract cleaning industry

- (1) This section applies if the authority—
- (a) pays an amount to a registered worker for the contract cleaning industry under section 2.9 (Payments for leave—contract cleaning industry) or section 2.10 (Payments instead of leave—contract cleaning industry); or
 - (b) reimburses a reciprocal authority under section 2.15 (Payments by reciprocal authority on authority's behalf—contract cleaning industry) for an amount paid to a registered worker.
- (2) The authority must delete from the workers register the details relating to the service period for which the worker has been paid.

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

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

- (1) This section applies if a public holiday falls during a period of long service leave taken by a registered worker for the contract cleaning industry.
- (2) The period of long service leave is increased by 1 day for each public holiday.

Schedule 3 Reviewable decisions

(see s 80, def *reviewable decision*)

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision-maker
1	31 (1) (b)	refuse to allow additional time for application for registration by employer	employer	registrar
2	33 (4)	direct registrar to refuse to register person as employer	person	governing board
3	37 (4) (b)	confirm registrar's decision to refuse to register applicant as employer	applicant	governing board
4	45 (3) (a)	confirm registrar's decision to refuse to register applicant as worker	person	governing board
5	47	refuse to credit employee with prior service	employee	governing board
6	47	amount of prior service credited	employee	governing board

Schedule 3

Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
7	48	refuse to credit contractor with prior service	contractor	governing board
8	48	amount of prior service credited	contractor	governing board
9	49 (1) (b)	refuse to allow employer additional time for giving return to authority	employer	registrar
10	52 (3)	refuse to remit all or part of amount to employer	employer	registrar
11	53 (2)	refuse to exempt employer from levy	employer	governing board
12	54 (1) (b)	refuse to allow registered contractor additional time for giving return to authority	registered contractor	registrar
13	60 (5) (b)	fix another amount as the total ordinary remuneration of worker for quarter	<ul style="list-style-type: none"> • worker • if the worker is an employee—the worker’s employer 	governing board
14	63 (2) (b)	refuse to allow additional time for person to pay amount	person	registrar

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
15	66 (1) (b)	refuse to direct registrar to re-register person	person	governing board
16	69 (3)	allow, or refuse to allow, objection to matter in certificate given to worker under s 67	<ul style="list-style-type: none"> worker if the worker is an employee—the worker's employer 	governing board
17	69 (3)	allow, or refuse to allow, objection to matter in certificate given to employer under s 68	<ul style="list-style-type: none"> employer employee to whom objection relates 	governing board
18	89 (2) (b)	not satisfied that amount paid by employer was properly paid	employer	governing board
19	sch 1, 1.7 (5) (b) or sch 2, 2.7 (5) (b)	refuse to allow additional period	applicant	governing board
20	sch 1, 1.8 (4) or sch 2, 2.8 (3)	not satisfied that section applies to applicant	applicant	governing board
21	sch 1, 1.9 (2) or sch 2, 2.9 (2)	not satisfied that applicant entitled to long service leave	applicant	governing board

Schedule 3Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
22	sch 1, 1.10 (6) or sch 2, 2.10 (6)	not satisfied that applicant entitled to payment instead of long service leave	applicant	governing board

Schedule 4 Consequential amendments

(see s 94)

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

(see s 95)

5.1 Legislation repealed

- (1) 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).
- (2) The *Long Service Leave (Building and Construction Industry) Regulation 1984* (SL1984-8) is repealed.
- (3) 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

(see s 3)

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

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

- ACAT
- ACT
- chief executive (see s 163)
- contravene
- disallowable instrument (see s 9)
- document
- Executive
- exercise
- function
- in relation to
- public servant
- quarter
- reviewable decision notice
- State
- the Territory.

at premises includes in or on the premises.

authority—see section 16.

building and construction industry—see section 1.3.

building and construction work—see section 1.2.

cleaning work—see section 2.2.

contract cleaning industry—see section 2.3.

contractor—see section 10.

corresponding law means a law of a State declared under section 87 to be a corresponding law.

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

covered industry—see section 6.

covered industry schedule means—

- (a) for the building and construction industry—schedule 1; and
- (b) for the contract cleaning industry—schedule 2.

day—see section 14.

decision-maker, for a reviewable decision, for part 9 (Notification and review of decisions)—see section 80.

employee—see section 9.

employer—see section 7.

employers register—see section 30.

governing board means the governing board of the authority.

long service leave formula—

- (a) for the building and construction industry—see schedule 1, section 1.5; and
- (b) for the contract cleaning industry—see schedule 2, section 2.5

ordinary remuneration, for a person, means the amount paid or payable to the person for work, other than any amounts for—

- (a) overtime; or
- (b) expenses incurred by the person; or
- (c) the use of materials, equipment or a motor vehicle provided by the person.

premises includes any land, structure or vehicle and any part of an area of land, a structure or vehicle.

reciprocal agreement—see section 90.

reciprocal authority means the entity under a corresponding law that administers the scheme of long service benefits established by the law.

reciprocating State means a State in relation to which a reciprocal agreement is in force.

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

recognised service, for a registered worker, means the total number of days for all service periods entered in the relevant workers register for the worker.

registered employer means a person who is registered under section 34.

registered worker means an individual who is registered under section 46.

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

registration day, in relation to a worker—see section 15.

reviewable decision, for part 9 (Notification and review of decisions)—see section 80.

service, for a registered worker for a covered industry, means service in the covered industry.

service period, for a registered worker for a covered industry—see section 12.

worker—see section 8.

workers register—see section 39.

working director means a person who is both a director and a employee of a company.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 25 June 2009.

2 Notification

Notified under the Legislation Act on 8 September 2009.

3 Republications of amended laws

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

I certify that the above is a true copy of the Long Service Leave (Portable Schemes) Bill 2009, which was passed by the Legislative Assembly on 25 August 2009.

Clerk of the Legislative Assembly

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