

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Wayne Berry)

Long Service Leave (Private Sector) Bill 2003

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2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Wayne Berry)

Long Service Leave (Private Sector) Bill 2003

A Bill for

An Act to provide for long service leave in the private sector other than the building and construction industry, and for related purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Long Service Leave (Private Sector) Act 2003*.

4 **2 Commencement**

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

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

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

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

15 **3 Objects of Act**

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

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

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

23 (c) recognised service is portable between this Act and the *Long*
24 *Service Leave (Building and Construction Industry) Act 1981*
25 and the *Long Service Leave Act 1976*.

26 *Note* Recognised service under this Act includes recognised service under the
27 repealed *Long Service Leave (Contract Cleaning Industry) Act 1999*
28 (see s 99 (Recognition of service in contract cleaning industry)).

4 Dictionary

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

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

For example, the signpost definition '*recognised service*—see section 78.' means that the expression 'recognised service' is defined in that section.

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

5 Notes

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

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

6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against his 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.

1 **Part 2** **Key concepts**

2 **7 Who is an *employer*?**

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

4 (a) the person—

5 (i) employs 1 or more people, whether in the ACT or
6 elsewhere; or

7 (ii) is declared to be an employer under section 10
8 (Declaration of *workers*); or

9 (b) the person engages a contractor for fee or reward.

10 (2) However, the following are not employers for this Act:

11 (a) the Territory;

12 (b) a Territory instrumentality;

13 (c) the University of Canberra;

14 (d) a building and construction industry employer;

15 (e) an entity prescribed under the regulations.

16 **8 Who is a *worker*?**

17 For this Act, an individual is a *worker* if the individual is—

18 (a) employed by an employer, whether in the ACT or elsewhere
19 and whether as—

20 (i) a part-time employee; or

21 (ii) a casual employee; or

22 (iii) a person remunerated at piecework rates; or

23 (iv) an apprentice; or

- 1 (b) engaged as a contractor; or
2 (c) declared to be a worker under section 10 (Declaration of
3 *workers*).

4 **9 Who is a *contractor*?**

5 For this Act—

- 6 (a) an individual (other than an employee or apprentice) is a
7 ***contractor*** if the person carries out work for another person for
8 fee or reward on the individual's own account; and
9 (b) the other person is the employer of the individual.

10 **10 Declaration of *workers***

11 (1) The Minister may declare—

- 12 (a) a stated person to be an employer, or an employer of a
13 particular worker; or
14 (b) a stated individual to be a worker, or a worker for a particular
15 employer.

16 (2) For this Act, an individual declared to be a worker of a particular
17 employer is taken to be employed by the employer.

18 (3) A declaration is a disallowable instrument.

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

21 **11 Meaning of *work***

22 (1) For this Act, work carried out by an employee outside the ACT is
23 taken to be ***work*** if the employer—

- 24 (a) gives the board a quarterly return under section 58 (Quarterly
25 returns by registered employers) in relation to the work; and
26 (b) pays the board the amount of levy payable by the employer
27 under section 60 (Quarterly levy payments) for the quarter.

Section 12

- 1 (2) For this Act, work carried out by a contractor outside the ACT is
2 taken to be **work** if the contractor—
- 3 (a) gives the board a quarterly return under section 59 (Quarterly
4 returns by registered contractors) in relation to the work; and
- 5 (b) pays the board the amount of levy payable by the contractor
6 under section 60 (Quarterly levy payments) for the quarter.
- 7 (3) For this Act, **work** includes work declared under this section to be
8 work for this Act.
- 9 (4) The Minister may declare a stated activity to be work for this Act.
- 10 (5) A declaration is a disallowable instrument.
- 11 *Note* A disallowable instrument must be notified, and presented to the
12 Legislative Assembly, under the Legislation Act.

12 Meaning of *day*

- 14 (1) In this Act:
15 ***day***—
- 16 (a) in relation to a worker covered by an award—has the same
17 meaning as in the award; or
- 18 (b) in relation to a worker to whom a declaration under subsection
19 (2) applies—means the period stated in the declaration; or
- 20 (c) in any other case—means 24 hours.
- 21 (2) For this Act, the Minister may declare a stated period to be a day for
22 a worker other than a worker covered by an award.
- 23 (3) A declaration under this section is a notifiable instrument.
- 24 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **Part 3 Administration**

2 **Division 3.1 The board**

3 **Subdivision 3.1.1 Establishment and functions etc**

4 **13 Private Sector Long Service Leave Board**

5 (1) The Private Sector Long Service Leave Board is established.

6 (2) The board is a corporation and is to have a common seal.

7 **14 Independence of board**

8 The board is independent of the Territory.

9 **15 Functions of board**

10 The board has, in addition to its functions under this Act, any other
11 function given to the board under any other Act.

12 **16 Members of board**

13 (1) The board consists of 6 members appointed by the Minister.

14 (2) The Minister must appoint—

15 (a) 2 members who, in the Minister's opinion, represent
16 employers; and

17 (b) 2 members who, in the Minister's opinion, represent
18 employees; and

1 (c) 2 other members.

2 *Note 1* For the making of appointments (including acting appointments), see
3 Legislation Act, div 19.3.

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

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

9 *Note 4* A person may be reappointed to a position if the person is eligible to be
10 appointed to the position (see Legislation Act, s 208 and dict, pt 1, def
11 *appoint*).

12 (3) Before appointing a member, the Minister must—

13 (a) for subsection (2) (a)—consult employer organisations
14 registered under the *Workplace Relations Act 1996* (Cwlth);
15 and

16 (b) for subsection (2) (b)—consult employee organisations
17 registered under that Act; and

18 (c) in any case—have regard to the abilities, qualifications,
19 experience and personal qualities of the person that are
20 relevant to the exercise of functions as a member.

21 **17 Chairperson and deputy chairperson**

22 (1) The Minister must appoint a member to be the chairperson of the
23 board.

24 (2) The deputy chairperson is the member elected by the members to be
25 the deputy chairperson of the board.

26 **18 Term of appointment of members**

27 A member is appointed for a term of not longer than 5 years.

28 *Note* For the making of appointments (including acting appointments), see
29 Legislation Act, div 19.3.

1 **19 Conditions of appointment generally**

2 A member holds the position on the conditions (if any) not provided
3 by this Act or another Territory law that are decided by the Minister.

4 **20 Ending of appointment of member**

5 (1) The Minister may end the appointment of a member of the board for
6 misbehaviour or physical or mental incapacity.

7 *Note* A person's appointment also ends if the person resigns (see Legislation
8 Act, s 210).

9 (2) The Minister must end the appointment of a member of the board—

10 (a) if satisfied that—

11 (i) a member appointed to represent employers no longer
12 represents employers; or

13 (ii) a member appointed to represent workers no longer
14 represents workers; or

15 (b) if the member—

16 (i) becomes bankrupt, applies to take the benefit of any law
17 for the relief of bankrupt or insolvent debtors, compounds
18 with his or her creditors or makes an assignment of his or
19 her pay for their benefit; or

20 (ii) is convicted in Australia of an offence punishable by
21 imprisonment for 1 year or longer; or

22 (iii) is absent, other than on leave approved by the Minister,
23 from 3 consecutive meetings of the board; or

24 (iv) fails to disclose an interest as required under section 24
25 (Disclosure of interests by members of board).

1 **21 Delegation**

2 The board may delegate any of its powers to a public servant.

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

5 **Subdivision 3.1.2 Proceedings of the board**

6 **22 Time and place of meetings of board**

7 (1) The board meets at the times and places it decides.

8 (2) However, the board must meet at least 4 times a year.

9 (3) The chairperson—

10 (a) may at any time call a meeting of the board; and

11 (b) must call a meeting if asked by the Minister or at least
12 3 members.

13 (4) If the chairperson is not available for any reason to call a meeting of
14 the board, the deputy chairperson may call the meeting.

15 **23 Procedures governing proceedings of board**

16 (1) The chairperson of the board presides at all meetings of the board at
17 which the chairperson is present.

18 (2) If the chairperson is absent, the deputy chairperson presides.

19 (3) If the chairperson and deputy chairperson are both absent, the
20 member chosen by the members present presides.

21 (4) Business may be carried out at a meeting of the council only if
22 4 members are present.

23 (5) At a meeting of the board each appointed member has a vote on
24 each question to be decided.

25 (6) A question is to be decided by a majority of the votes of the
26 members present and voting but, if the votes are equal, the presiding
27 member has a casting vote.

-
- 1 (7) The board may hold meetings, or allow members to take part in
2 meetings, by telephone, closed-circuit television or another form of
3 communication.
- 4 (8) A member who takes part in a meeting conducted under
5 subsection (7) is taken to be present at the meeting.
- 6 (9) A resolution of the board is a valid resolution, even though it was
7 not passed at a meeting of the board, if—
- 8 (a) all members agree, in writing, to the proposed resolution; and
- 9 (b) notice of the resolution is given under procedures decided by
10 the board.
- 11 (10) The board must keep minutes of its meetings.
- 12 (11) The board may conduct its proceedings (including its meetings) as it
13 otherwise considers appropriate.

14 **24 Disclosure of interests by members of board**

- 15 (1) This section applies to a member of the board if—
- 16 (a) the member has a direct or indirect financial interest in an issue
17 being considered, or about to be considered, by the board; and
- 18 (b) the interest could conflict with the proper exercise of the
19 member's functions in relation to the board's consideration of
20 the issue.
- 21 (2) As soon as practicable after the relevant facts come to the member's
22 knowledge, the member must disclose the nature of the interest to a
23 meeting of the board.
- 24 (3) The disclosure must be recorded in the board's minutes and, unless
25 the board otherwise decides, the member must not—
- 26 (a) be present when the council considers the issue; or
- 27 (b) take part in a decision of the board on the issue.

- 1 (4) Any other member who also has a direct or indirect financial interest
2 in the issue must not—
- 3 (a) be present when the board is considering its decision under
4 subsection (3); or
- 5 (b) take part in making the decision.
- 6 (5) Within 14 days after the end of each financial year, the chairperson
7 of the board must give the Minister a statement of any disclosure of
8 interest made under this section during the financial year.

9 **25 Protection of members**

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

14 **26 Arrangements for staff**

- 15 (1) The board may arrange with the chief executive to use public
16 servants in the administrative unit under the chief executive's
17 control.
- 18 (2) The *Public Sector Management Act 1994* applies to the management
19 by the board of public servants the subject of an arrangement under
20 subsection (1).

21 **Subdivision 3.1.3 Finances**

22 **27 Money of board**

- 23 The money of the board consists of—
- 24 (a) money received by the board under section 60 (Quarterly levy
25 payments); and
- 26 (b) income derived from the investment of money of the board;
27 and

- 1 (c) money borrowed by the board; and
2 (d) any other money paid to the board under an Act.

3 **28 Application of money**

4 The money of the board must be applied only—

- 5 (a) in payment or discharge of the costs, expenses or other
6 obligations of the board under this Act; and
7 (b) in payment of remuneration and allowances payable to any
8 person appointed or employed under this Act.

9 **29 Borrowing by board**

- 10 (1) The board may borrow money in amounts, and on terms, approved
11 by the Minister.
12 (2) The board may give security over the whole or part of its assets for
13 the repayment of money borrowed under this section and the
14 payment of interest on that money.
15 (3) The board may only borrow money in accordance with this section.

16 **30 Contracts**

- 17 (1) The board must not, except with the approval of the Minister, enter
18 into a contract for the payment or receipt by the board of an amount
19 greater than \$250 000.
20 (2) Subsection (1) does not apply to a contract for the investment of
21 money entered into in accordance with the *Financial Management*
22 *Act 1996*, section 56.

23 **31 Actuarial investigation**

- 24 (1) The Treasurer must, in writing, appoint an actuary.
25 (2) The actuary must conduct an investigation of the state and
26 sufficiency of the money of the board—

- 1 (a) when requested by the board; and
- 2 (b) in any event, within 3 years after the commencement of this
- 3 Act and at the end of each following period of 3 years.
- 4 (3) The actuary must report to the board the result of the investigation
- 5 and must state whether, in the actuary's opinion, any reduction or
- 6 increase is necessary in the rates of periodic payments payable to the
- 7 board by employers under this Act.
- 8 (4) The actuary must give the Minister a copy of each report made
- 9 under this section.

10 **32 Application of Financial Management Act 1996, pt 8**

11 The *Financial Management Act 1996*, part 8 applies to the board in

12 the same way it applies to a Territory authority, and as if the

13 references in that part to a chief executive officer were references to

14 the board.

15 **Subdivision 3.1.4 Advisory committees**

16 **33 Establishment**

- 17 (1) The board may establish an advisory committee to assist in the
- 18 exercise of its functions.
- 19 (2) If asked by the Minister, the board must establish an advisory
- 20 committee to assist in the exercise of the board's functions in
- 21 relation to any matter specified by the Minister concerning long
- 22 service leave.
- 23 (3) Subject to any direction by the board, an advisory committee may
- 24 determine how it is to exercise its functions.

**Division 3.2 The registrar, deputy registrar and
inspectors**

34 Registrar and deputy registrar

(1) The following positions are established:

- (a) registrar of the board;
- (b) deputy registrar of the board.

(2) The registrar and deputy registrar must be public servants.

35 Functions of the registrar and deputy registrar

The registrar and deputy registrar have the functions given under this Act or another Act, or as the board directs.

36 Inspectors

(1) The chief executive may, in writing, appoint a person to be an inspector for this Act.

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

(2) A person may be appointed as an inspector only if—

- (a) the person is an Australian citizen or a permanent resident of Australia; and
- (b) the chief executive is satisfied that the person is a suitable person to be appointed, having regard in particular to—
 - (i) whether the person has any criminal convictions; and
 - (ii) the person's employment record; and
- (c) the person has satisfactorily completed adequate training to exercise the powers of an inspector proposed to be given to the person.

- 1 **37 Identity cards for inspectors**
- 2 (1) The chief executive must give an inspector an identity card that
3 states the person is an inspector for this Act, and shows—
- 4 (a) a recent photograph of the person; and
- 5 (b) the name of the person; and
- 6 (c) the date of issue of the card; and
- 7 (d) an expiry date for the card; and
- 8 (e) anything else prescribed under the regulations.
- 9 (2) A person commits an offence if—
- 10 (a) the person was appointed as an authorised person under
11 section 36 (2) (Inspectors); and
- 12 (b) the person ceases to be an authorised person; and
- 13 (c) the person does not return the person's identity card to the
14 chief executive as soon as practicable (but within 7 days) after
15 the day the person ceases to be an authorised person.
- 16 Maximum penalty: 1 penalty unit.
- 17 (3) An offence against this section is a strict liability offence.
- 18 **38 Power not to be exercised before identity card shown etc**
- 19 (1) An inspector may exercise a power under this part in relation to a
20 person only if the inspector first shows the person his or her identity
21 card.
- 22 (2) An inspector may not remain in premises entered under this part if,
23 when asked by the principal, the inspector does not show his or her
24 identity card.

39 Power to enter premises

(1) To find out whether this Act is being complied with, an inspector may—

(a) at any reasonable time, enter premises that the inspector has reasonable grounds for believing are premises of a registered employer; or

(b) at any time, enter premises that the inspector has reasonable grounds for believing are premises of a registered employer if the occupier of the premises consents to the entry.

(2) An inspector may, without the occupier's consent, enter premises to ask for consent to enter the premises.

40 Consent to entry

(1) This section applies if an inspector intends to ask the occupier of premises to consent to the inspector entering the premises.

(2) Before asking for the consent, the inspector must tell the occupier—

(a) the reason for the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the principal to sign an acknowledgment of the consent.

(4) The acknowledgment must state that—

(a) the occupier was told—

(i) the reason for the entry; and

(ii) that the occupier is not required to consent; and

(b) the occupier gives an inspector consent to enter the premises and exercise powers under this part; and

(c) the time and date the consent was given.

- 1 (5) If the occupier signs an acknowledgment of consent, the inspector
2 must immediately give a copy to the occupier.
- 3 (6) A court may assume that the occupier did not consent if—
- 4 (a) a question arises, in a proceeding in the court, whether the
5 occupier consented to the inspector entering the premises under
6 this part; and
- 7 (b) an acknowledgment under this section is not produced in
8 evidence for the entry; and
- 9 (c) it is not proved that the occupier consented to the entry.
- 10 **41 Powers on entry**
- 11 (1) An inspector who enters premises under section 39 (Power to enter
12 premises) may, for this Act—
- 13 (a) examine any document to check the accuracy of information
14 given to, or being held by, the board; or
- 15 (b) require a person at the premises to give the inspector—
- 16 (i) information within the person's knowledge relating to the
17 rights or liabilities of a person under this Act; and
- 18 (ii) any document in the person's possession, or to which the
19 person has access, that is reasonably required by the
20 inspector to check the accuracy of information given to,
21 or held by, the board.
- 22 (2) An inspector may, by written notice given to a person who is (or
23 was) a registered employer or registered contractor, require the
24 person to produce to the board, within 14 days after the day on
25 which the notice was given, any information or document
26 mentioned in subsection (1) (b) stated in the notice.

-
- 1 (3) A person commits an offence if the person—
2 (a) is required to produce information or a document under
3 subsection (1) (b); and
4 (b) fails to comply with the requirement.
5 Maximum penalty: 10 penalty units.
6 (4) An offence against this section is a strict liability offence.
7 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
8 privilege against selfincrimination and client legal privilege.

1 **Part 4 Registration**

2 **Division 4.1 Application**

3 **42 Application of pt 4**

4 This part does not apply in relation to work in the building and
5 construction industry.

6 **Division 4.2 Registration of employers**

7 **43 Employers register**

8 The board must keep a register of registered employers (the
9 *employers register*).

10 **44 Application for registration by employers**

11 (1) A person who becomes an employer commits an offence if the
12 person fails to apply to the registrar for registration as an
13 employer—

14 (a) within 1 month after becoming an employer; or

15 (b) within any additional time the registrar allows.

16 *Note* If a form is approved under s 94 (Approved forms) for an application,
17 the form must be used.

18 Maximum penalty: 50 penalty units.

19 (2) The registrar may, before time expires under subsection (1), allow
20 additional time for making the application.

21 (3) An offence against subsection (1) is a strict liability offence.

1 **45 Dealing with applications**

2 (1) If the registrar is satisfied that an applicant under section 44 is an
3 employer, the registrar must register the person as an employer.

4 (2) If the registrar is not satisfied that the applicant is an employer, the
5 registrar must refuse to register the person as an employer.

6 **46 Order to apply for registration**

7 (1) If a court convicts or finds a person guilty of an offence against
8 section 44 (Application for registration by employers), the court
9 may, in addition to imposing a penalty on the person, order the
10 person to—

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

13 (b) pay to the board the amount that would have been payable by
14 the person under section 60 (Quarterly levy payments) if the
15 person had complied with this Act since becoming an
16 employer.

17 (2) A person who contravenes the order commits an offence.

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

20 (3) If a certified copy of an order under subsection (1) (b) is filed in a
21 court having civil jurisdiction to the extent of the amount stated in
22 the order, the order has effect in all respects as if it were a judgment
23 of the court.

24 **47 Registration as an employer**

25 The registrar registers a person as an employer by entering in the
26 employers register—

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

28 (b) the address of the person's principal place of business; and

- 1 (c) if the person is a corporation—the address of its registered
2 office; and
3 (d) the date when registration takes effect; and
4 (e) any other particulars that the board directs the registrar to enter
5 in the register.

6 **48 Certificate of registration**

- 7 (1) As soon as practicable after registering a person as an employer, the
8 registrar must give the person a certificate of registration that
9 includes the date when the registration took effect.
10 (2) If satisfied that a certificate of registration has been stolen, lost or
11 destroyed, the registrar may give the person a replacement
12 certificate of registration.
13 (3) A certificate of registration is evidence of the matters stated in the
14 certificate.

15 **49 Registered employers to notify change of details**

- 16 (1) A registered employer commits an offence if—
17 (a) the employer's details shown on the certificate of registration
18 change; and
19 (b) the employer does not, as soon as practicable (but within
20 7 days) after the change happens—
21 (i) tell the board, in writing, of the change; and
22 (ii) return the certificate to the board.

23 Maximum penalty: 5 penalty units.

- 24 (2) The board must give the employer an amended certificate for the
25 remainder of the term of the returned certificate.
26 (3) An offence against this section is a strict liability offence.

50 Public access to register

- (1) Anyone may, without charge, inspect the register during ordinary office hours of the office of the registrar.
- (2) A person may, on payment of reasonable copying costs, obtain a copy of all or part of the register.

Division 4.3 Registration of workers

51 Workers register

The board must keep a register of registered workers (the *workers register*).

52 Application for registration by workers

- (1) A person may apply to the registrar for registration as a worker.

Note If a form is approved under s 94 (Approved forms) for an application, the form must be used.

- (2) The registrar must register the person if satisfied that the person is a worker.
- (3) If the registrar is not satisfied that the person is a worker, the registrar must refuse to register the person as a worker.

53 Registration as a worker

The registrar registers a person as a worker by entering in the workers register—

- (a) the person's name, address and date of birth; and
- (b) the address of the principal place of business of each registered employer of the person; and
- (c) if an employer of the person is a corporation—the address of its registered office; and
- (d) the date when registration takes effect; and

- 1 (e) any other particulars that the board directs the registrar to enter
2 in the register.

3 **54 Certificate of registration**

- 4 (1) As soon as practicable after registering a person as a worker, the
5 registrar must give the person a certificate of registration that
6 includes the date when the registration took effect.
- 7 (2) If satisfied that a certificate of registration has been stolen, lost or
8 destroyed, the registrar may give the person a replacement
9 certificate of registration.
- 10 (3) A certificate of registration is evidence of the matters stated in the
11 certificate.

12 **55 Public access to register**

- 13 (1) Anyone may, without charge, inspect the register during ordinary
14 office hours of the office of the registrar.
- 15 (2) A person may, on payment of reasonable copying costs, obtain a
16 copy of all or part of the register.

1 **Part 5** **Quarterly returns and**
2 **payments**

3 **56 Meaning of *quarterly return***

4 In this part:

5 *quarterly return* means a return under section 58 (Quarterly returns
6 by registered employers) or section 59 (Quarterly returns by
7 registered contractors).

8 **57 Application of pt 5**

9 This part does not apply in relation to work in the building and
10 construction industry.

11 **58 Quarterly returns by registered employers**

- 12 (1) Within 15 days after the end of each quarter or any longer period
13 allowed by the registrar, a registered employer must give the board a
14 return for the quarter.

15 Maximum penalty: 20 penalty units.

16 *Note* If a form is approved under section 94 (Approved forms) for a return,
17 the form must be used.

- 18 (2) Each quarterly return by a registered employer must show, in
19 relation to each of the employer's registered workers—

20 (a) each day when the worker was employed by the employer
21 during the quarter (whether or not the worker worked on that
22 day); and

23 (b) the total ordinary remuneration paid to the worker by the
24 employer during the quarter.

25 (c) any other particulars prescribed under the regulations.

- 1 (3) In subsection (2) (b):
2 *worker* does not include a person who worked for less than
3 5 consecutive days during the quarter.

4 **59 Quarterly returns by registered contractors**

- 5 (1) Within 15 days after the end of each quarter or any longer period
6 allowed by the registrar, a registered contractor must give the board
7 a return for the quarter.

8 Maximum penalty: 20 penalty units.

9 *Note* If a form is approved under section 94 (Approved forms) for a return,
10 the form must be used.

- 11 (2) Each quarterly return by a registered contractor must show—
12 (a) each day when the contractor worked for a registered employer
13 during the quarter; and
14 (b) the total ordinary remuneration paid to the contractor by the
15 employer during the quarter.
16 (c) any other particulars prescribed under the regulations.

17 **60 Quarterly levy payments**

- 18 (1) A person required to give a quarterly return must also pay the board,
19 at the same time, the amount of levy payable by the person for the
20 quarter.

21 Maximum penalty: 20 penalty units.

- 22 (2) The amount of levy payable by the person is the amount worked out
23 in accordance with the determination under section 62
24 (Determination of quarterly levy) applying to the quarter.

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

61 Board's recommendations about levy

- (1) The board may, in writing, give the Minister a recommendation about the amount of levy to be determined by the Minister under section 62 for a quarter.
- (2) Before making a determination for a quarter, the Minister must have regard to any recommendation by the board.
- (3) Also, the Minister may have regard to the total amount paid by the board on behalf of the Construction Industry Long Service Leave Board for the previous quarter.

62 Determination of quarterly levy

- (1) The amount of levy payable by a registered employer for a quarter is the percentage, determined by the Minister in writing, of the total ordinary remuneration paid or payable by the employer to registered employees (other than apprentices) during the quarter.
- (2) The amount of levy payable by a registered contractor for a quarter is the percentage, determined by the Minister in writing, of the total ordinary remuneration paid or payable by a registered employer to the contractor during the quarter.

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.

- (3) A determination under subsection (1) or (2) is a disallowable instrument.

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

1 **63 Failure to give quarterly returns or make quarterly**
2 **payments**

- 3 (1) A person who fails to give the board a quarterly return as required
4 under section 58 (Quarterly returns by registered employers) or
5 section 59 (Quarterly returns by registered contractors) must pay the
6 board \$25 for each month or part of a month after the day the return
7 was required until the return is given to the board.
- 8 (2) A person who fails to pay an amount of levy to the board as required
9 under section 60 (Quarterly levy payments) must pay the board, in
10 addition to that amount, \$25 for each month or part of a month after
11 the day the payment was required until the amount of levy is paid to
12 the board.
- 13 (3) The registrar may remit all or part of an amount payable under
14 subsection (1) or (2) if satisfied that—
- 15 (a) the person required to pay is unable to do so because of
16 circumstances beyond the person's control; or
- 17 (b) because of special circumstances, it would be fair to remit the
18 amount.
- 19 (4) If a court finds a person guilty of an offence against section 58
20 (Quarterly returns by registered employers) or section 59 (Quarterly
21 returns by registered contractors) (whether or not it convicts the
22 person), the court may, in addition to imposing a penalty on the
23 person, order the person to pay the board any amount payable under
24 subsection (1) to the date of the order.
- 25 (5) If a court finds a person guilty of an offence against section 60 (1)
26 (Quarterly levy payments) (whether or not it convicts the person),
27 the court may, in addition to imposing a penalty on the person, order
28 the person to pay the board—
- 29 (a) the amount that was the subject of the prosecution; and
- 30 (b) any amount payable under subsection (2) to the date of the
31 order.

- 1 (6) A certified copy of an order under subsection (4) or (5) may be filed
2 in a court having civil jurisdiction to the extent of the amount stated
3 in the order and, if so filed, has effect in all respects as if it were a
4 judgment of the court.

5 **64 Exemption from levy payments—working directors**

- 6 (1) The board must, on application by a registered employer of a
7 working director, exempt the employer from payment of an amount
8 payable under section 60 (1) (Quarterly levy payments) for work
9 done by the working director.

10 *Note* If a form is approved under s 94 (Approved forms) for an application,
11 the form must be used.

- 12 (2) The exemption is in force until the earlier of the following happens:
13 (a) the working director ceases to be a working director other than
14 because the director ceases to work as an employee;
15 (b) the working director notifies the board in writing that the
16 director no longer wishes the exemption to apply in relation to
17 the director.
18 (3) A working director is taken not to be an employee under this Act
19 while an exemption is in force in relation to the director.

20 **65 Registered employers to keep records**

- 21 (1) A registered employer must, for each worker, make a record
22 showing particulars of the following:
23 (a) the worker's name and date of birth;
24 (b) the nature of the work done by the worker;
25 (c) the worker's ordinary remuneration;
26 (d) the date when the worker began employment with the
27 employer;

Part 5 Quarterly returns and payments

Section 65

- 1 (e) long service leave granted, or payment instead of leave made,
2 to the worker;
- 3 (f) if the worker ceases to be employed by the employer—the date
4 when employment ceased.
- 5 Maximum penalty: 20 penalty units.
- 6 (2) The employer must keep the record for 6 years after the date the
7 worker ceases employment with the employer.
- 8 Maximum penalty: 20 penalty units.

Part 6 Entries in workers register

66 Application of pt 6

This part does not apply in relation to work in the building and construction industry.

67 Particulars to be entered in workers register

The registrar must ensure as far as practicable that the workers register contains the following particulars for each registered worker:

- (a) the number of days of service credited to the worker under this Act;
- (b) the ordinary remuneration payable to the worker;
- (c) the worker's accrued long service leave;
- (d) details of the long service leave granted to, or taken by, the worker, whether under—
 - (i) this Act; or
 - (ii) the *Long Service Leave (Building and Construction Industry) Act 1981*; or
 - (iii) the *Long Service Leave Act 1976*.
- (e) details of any payment instead of long service leave made to the worker under an Act mentioned in paragraph (d);
- (f) if the worker's employment has ended—the date when it ended;
- (g) if the worker is an apprentice—the date when the apprenticeship began;
- (h) any other particulars required by the board.

- 1 **68 Board's assessment of ordinary remuneration**
- 2 (1) If the board believes on reasonable grounds that the total ordinary
3 remuneration for a worker stated in a quarterly return by a registered
4 employer is insufficient or excessive because of the nature of the
5 work done by the worker in the quarter, the board may fix another
6 amount that it believes more accurately represents the total ordinary
7 remuneration of the worker for the quarter.
- 8 (2) Before fixing an amount under subsection (1), the board must act in
9 accordance with the following subsections.
- 10 (3) The board must give the employer and the worker a written notice—
11 (a) setting out the board's belief and supporting reasons; and
12 (b) outlining the effect of this section, and in particular, the
13 arrangements under subsection (4) and (5).
- 14 (4) The employer or worker may, in writing—
15 (a) ask the board to take into account any matters set out in the
16 request; or
17 (b) ask to appear before the board, either in person or by a
18 representative, and make representations about the matter.
- 19 (5) A request under subsection (3) must be made within 1 month after
20 the day the board's notice is given to the person making the request.
- 21 (6) If asked under subsection (3) (b), the board must arrange for the
22 person making the request to appear before the board as soon as
23 practicable.
- 24 (7) The board must consider any matter or representation put to it under
25 this section.
- 26 (8) If the board fixes an amount under subsection (1), the amount is
27 taken, for this Act, to be the total ordinary remuneration paid by the
28 employer to the worker during the quarter.

- 1 (9) If the amount fixed under subsection (1) is more than the amount
2 shown as the total ordinary remuneration of the worker in the
3 quarterly return, the employer must pay to the board the difference
4 between the amount of levy paid by the employer for the quarter and
5 the amount that would have been payable if the amount fixed by the
6 board had been shown in the return as the total ordinary
7 remuneration of the worker for the quarter.
- 8 (10) If the amount fixed under subsection (1) is less than the amount
9 shown as total ordinary remuneration of the worker in the quarterly
10 return, the board must pay to the employer the difference between
11 the amount of levy paid by the employer for the quarter and the
12 amount that would have been payable if the amount fixed by the
13 board had been shown in the return as the total ordinary
14 remuneration of the worker for the quarter.

15 **69 Service credits**

- 16 (1) A registered employee is to be credited in the workers register with
17 1 day's service for each day when the employee is employed by a
18 registered employer (whether or not the employee works on that day
19 for the employer).
- 20 (2) A registered contractor is to be credited in the workers register with
21 1 day's service for each day when the contractor works for a
22 registered employer.
- 23 (3) A registered worker must not be credited with more than 1 day's
24 service in any 24-hour day.
- 25 *Note* For some workers, a day may not be a 24-hour period (see s 12
26 (Meaning of *day*)).
- 27 (4) A registered worker must not be credited with a period of service
28 unless payment has been made to the board in accordance with
29 section 58 (Quarterly returns by registered employers) or section 59
30 (Quarterly returns by registered contractors) in relation to the period
31 of service.

1 **70 Service credits in special circumstances**

2 (1) If a person—

3 (a) has been paid an amount under section 84 (Payment instead of
4 leave—employees); and

5 (b) the person again becomes a registered worker;

6 the worker must not be credited in the workers register with any
7 period of service during the 12 months beginning on the date when
8 the application for the payment was made.

9 (2) The registrar may credit an employee with a day's service in the
10 workers register if—

11 (a) a registered employer has ceased to employ people; and

12 (b) the employer has not paid an amount of levy required in
13 relation to the employment of the employee on that day; and

14 (c) the registrar is satisfied that, if the employer had made the
15 payment, the employee would have been credited with a day's
16 service in relation to the employment.

17 **71 Removing names from workers register**

18 (1) The board must remove a worker's particulars from the workers
19 register if the worker has not been credited under this Act with a
20 day's service for 4 consecutive years.

21 (2) If the worker's particulars are removed under subsection (1), the
22 worker ceases to be a registered worker on the day they are
23 removed.

24 (3) However, if the worker would have been entitled to payment instead
25 of leave in relation to any credited service immediately before the
26 registration ceased, the ending of the registration does not affect that
27 entitlement.

28 (4) To avoid any doubt, the ending of a worker's registration does not
29 prevent the person again becoming a registered worker.

Part 7 Annual certificates

72 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 date of registration to the end of the previous financial year, that the worker has been credited with in the workers register; and
- (b) the number of days of service that the worker has been credited with for the previous financial year; and
- (c) the total ordinary remuneration paid to the worker during the previous financial year by a registered employer.

73 Annual certificates for employers

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

- (a) the name of each registered worker of the employer recorded in the workers register; and
- (b) for each registered worker—
 - (i) the number of days of service, from the date of registration of the worker 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 of amounts paid by the employer under section 60 (Quarterly levy payments) for the previous financial year.

- 1 **74 Objection to matter stated in annual certificate**
- 2 (1) A person who is given a certificate under section 72 (Annual
- 3 certificates for workers) or section 73 may object to the board about
- 4 the accuracy of a matter stated in the certificate.
- 5 (2) An objection must be made in writing within 6 months after the day
- 6 the certificate is given to the person objecting.
- 7 *Note* For how documents may be given, see Legislation Act, pt 19.5.
- 8 (3) If an objection is made, the board must decide the objection and
- 9 must, if it allows the objection—
- 10 (a) make any necessary correction in the workers register; and
- 11 (b) give an amended certificate to the person who made the
- 12 objection.

Part 8 Long service leave and payments

Division 8.1 General

75 Definitions for pt 8

In this part:

award holiday, for a worker, means a holiday under an award or agreement that applies to the worker.

registered worker includes a former registered worker.

76 Long service leave formula

(1) For this Act:

long service leave formula, in relation to a registered worker, means—

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

(2) In this section:

DF means 13/15 or, if another fraction is prescribed under the regulations, the prescribed fraction.

Note The Legislation Act, section 48 includes, among other things, the power in an instrument (eg the regulations) to make different provision with respect to different matters or different classes of matters.

RS means the number of days of recognised service of the worker.

W means the number of weeks of long service leave.

1 **77 Application of pt 8**

2 This part does not apply in relation to recognised service in the
3 building and construction industry.

4 **78 Recognised service**

5 (1) A registered worker is taken to have 1 day's recognised service for
6 each day of service credited to the worker in the workers register.

7 (2) A registered worker is taken to have 1 year of recognised service for
8 each 365 days of recognised service.

9 **79 Entitlement to long service leave**

10 (1) A worker who has 10 years of recognised service with a registered
11 employer is entitled to long service leave in relation to that period.

12 (2) The worker's entitlement to long service leave in relation to a period
13 of service accrues to the worker at the end of that period.

14 **80 Amount of leave**

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

18 (2) A registered worker who—

19 (a) has become entitled to long service leave under this Act; and

20 (b) has additional days of recognised service;

21 is entitled to long service leave for the additional days of recognised
22 service worked out in accordance with the long service leave
23 formula.

1 **81 Grant of employee's leave**

- 2 (1) An employer must grant an employee's long service leave under this
3 Act within 6 months after the day the leave accrues unless—
- 4 (a) on application by the employer or employee, the board allows
5 a longer period; or
- 6 (b) the employer and employee agree to a longer period.
- 7 Maximum penalty: 50 penalty units.
- 8 (2) Long service leave must not be granted for a period of less than
9 2 weeks.
- 10 (3) The employer must give the employee written notice stating the
11 dates when the leave begins and ends.
- 12 (4) The employer's notice must be given at least 2 months before the
13 date stated in the notice when the long service leave begins, unless
14 the employee otherwise agrees.

15 **82 Board to pay for employees leave**

- 16 (1) A registered employee may apply to the board for payment for long
17 service leave granted under section 81.
- 18 (2) An application must—
- 19 (a) be in writing signed by the applicant; and
- 20 (b) be given to the board; and
- 21 (c) state the period of long service leave for which the payment is
22 sought; and
- 23 (d) be accompanied by the notice mentioned in section 81 (3).
- 24 (3) If the board is satisfied that the applicant is entitled to long service
25 leave, the board must pay the applicant an amount worked out in
26 accordance with section 83 (Payment for leave—employees).

- 1 (4) The board must pay an applicant under subsection (3) at least 7 days
2 before the applicant's long service leave begins if—
- 3 (a) the application is made at least 14 days before the long service
4 leave begins; and
- 5 (b) the applicant requests the payment to be made at least 7 days
6 before that leave begins.

7 **83 Payment for leave—employees**

- 8 (1) If an employee is entitled to long service leave, the board must pay
9 the employee for the period of the leave at the rate at which ordinary
10 remuneration would be payable to the employee if he or she were
11 employed for the period.
- 12 (2) For this section, the employee's ordinary remuneration is the greater
13 of the employee's average weekly remuneration during the
14 following periods:
- 15 (a) the last 2 quarters completed before the day the employee's
16 application for payment under section 82 was received by the
17 board;
- 18 (b) the last 4 quarters completed before the day the application was
19 received by the board.

20 **84 Payment instead of leave—employees**

- 21 (1) A person to whom this section applies is entitled to payment by the
22 board of an amount equivalent to ordinary remuneration, in relation
23 to the qualifying period of recognised service, worked out in
24 accordance with section 83.
- 25 (2) For subsection (1)—
- 26 (a) an application for payment under this section must be made to
27 the board; and

- 1 (b) a reference in section 83 to an application for payment is taken
2 to be a reference to an application for payment under this
3 section.
- 4 (3) For this section, the *qualifying period* of recognised service for a
5 person is the period that entitles the person to payment under this
6 section.
- 7 (4) This section applies to—
- 8 (a) a registered employee if—
- 9 (i) the board is satisfied that the employee has permanently
10 ceased work because of total incapacity; and
- 11 (ii) the employee is credited with a period of recognised
12 service longer than 54 days but shorter than 10 years; and
- 13 (b) the personal representative of a registered employee who—
- 14 (i) has died; and
- 15 (ii) at the date of death was credited with a period of
16 recognised service longer than 54 days but shorter than
17 10 years.
- 18 (5) This section applies to a registered employee if—
- 19 (a) the employee is a working director, or has been a working
20 director while a registered employee; and
- 21 (b) the employee's period of recognised service is longer than
22 5 years but shorter than 10 years.
- 23 (6) This section applies to a registered employee if—
- 24 (a) the employee is not a working director, and has not been a
25 working director while registered as an employee; and
- 26 (b) the employee's period of recognised service is longer than
27 5 years but shorter than 10 years; and

- 1 (c) the employee has ceased work for a reason other than total
2 incapacity, death or retirement with the intention of
3 permanently ceasing work; and
- 4 (d) either—
- 5 (i) at least 20 weeks have passed since the last employment
6 day credited to the employee; or
- 7 (ii) the board is satisfied that the employee intends to live in
8 a foreign country.
- 9 (7) This section applies if—
- 10 (a) a registered employee is credited with a period of recognised
11 service of longer than 54 days but shorter than 10 years; and
- 12 (b) the employee is 55 years or older and retires permanently from
13 work.

14 **85 Payments to eligible contractors**

- 15 (1) An eligible contractor is entitled to payment by the board of the sum
16 of—
- 17 (a) the amount of the quarterly levy payments made by the
18 contractor in relation to the qualifying period of recognised
19 service; and
- 20 (b) interest on that amount at the rate determined by the Minister.
- 21 (2) A determination is a disallowable instrument.
- 22 *Note* A disallowable instrument must be notified, and presented to the
23 Legislative Assembly, under the Legislation Act.
- 24 (3) Application for payment under this section must be made to the
25 board.

(4) In this section:

eligible contractor means—

(a) a registered contractor who has 10 years or more recognised service; or

(b) a registered contractor in relation to whom each of the following requirements is satisfied:

(i) the contractor's period of recognised service is longer than 5 years but shorter than 10 years;

(ii) the contractor has ceased work for a reason other than total incapacity, death, or retirement with the intention of permanently ceasing work;

(iii) either, at least 20 weeks have passed since the contractor was last credited with recognised service, or the board is satisfied that the contractor intends to live in a foreign country; or

(c) a contractor—

(i) whose period of recognised service is longer than 54 days but shorter than 10 years; and

(ii) who is 55 years or older and has retired permanently from work; or

(d) a contractor who—

(i) has a period of recognised service longer than 54 days but shorter than 10 years; and

(ii) the board is satisfied has permanently ceased work because of total incapacity or death.

qualifying period of recognised service, for a person, is the period that entitles the person to payment under this section.

1 **86 Public holidays not to count as leave**

2 If a public holiday or an award holiday falls during a period of long
3 service leave—

- 4 (a) the public holiday or award holiday is taken not to be part of
5 the long service leave; and
6 (b) the period of leave is to be increased because of the holiday.

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

4 **87** **Definitions for pt 9**

5 In this part:

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

8 ***eligible worker*** means a worker who has recognised service as an
9 employee or contractor under the Building and Construction
10 Industry Act.

11 ***long service benefit*** means long service leave, or payment instead of
12 leave, under part 8.

13 **88** **Recognition of building and construction industry service**

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

18 (2) For subsection (1), the amount of the worker's recognised service
19 under the Building and Construction Industry Act is to be worked
20 out in accordance with that Act.

21 (3) An eligible worker is not entitled to a long service benefit under this
22 Act in relation to recognised service under the Building and
23 Construction Industry Act if a long service benefit is, or has been,
24 provided under that Act in relation to that service.

- 1 **Part 10 Miscellaneous**
- 2 **Division 10.1 Review of decisions**
- 3 **89 Meaning of *reviewable decisions***
- 4 In this division:
- 5 *reviewable decision* means—
- 6 (a) a decision of the board mentioned in schedule 1, part 1.1,
7 column 3 under a provision of this Act mentioned in
8 schedule 1, part 1.1, column 2 in relation to the decision; or
- 9 (b) a decision of the registrar mentioned in schedule 1, part 1.2,
10 column 3 under a provision of this Act mentioned in
11 schedule 1, part 1.2, column 2 in relation to the decision.
- 12 **90 Notice of decisions to be given to affected people**
- 13 (1) If the board makes a reviewable decision, the board must give
14 written notice of the decision to each person mentioned in
15 schedule 1, part 1.1, column 4 in relation to the decision.
- 16 (2) If the registrar makes a reviewable decision, the registrar must give
17 written notice of the decision to each person mentioned in
18 schedule 1, part 1.2, column 4 in relation to the decision.
- 19 (3) A notice must be in accordance with the requirements of the code of
20 practice in force under the *Administrative Appeals Tribunal*
21 Act 1989, section 25B (1).
- 22 **91 Review by administrative appeals tribunal of certain**
23 **decisions**
- 24 A person may apply in writing to the administrative appeals tribunal
25 for review of a reviewable decision.

Division 10.2 General

92 Benefits under Long Service Leave Act 1976

- (1) A registered employee who is eligible for long service benefits under this Act and the *Long Service Leave Act 1976* must elect whether to take the benefits provided under this Act or the *Long Service Leave Act 1976*.
- (2) The registered employee must notify the board in writing of the nature of the employee's election and of the recognised service under this Act in relation to which the election is made.
- (3) If a registered employee elects to take long service benefits under the *Long Service Leave Act 1976* in relation to a period of recognised service under this Act, the board must remove from the workers register the days of recognised service credited to the employee in that period.
- (4) A registered employer under this Act who is liable to make a payment under the *Long Service Leave Act 1976*, section 8 in relation to a period of recognised service by a registered employee may apply to the board for payment of the amount on the employer's behalf, or reimbursement of the amount paid, if—
- (a) the employee has elected to take long service benefits under that Act; and
- (b) but for the election, long service benefits would have been payable under this Act in relation to the period of recognised service.
- (5) If the board is satisfied the amount is properly payable, or was properly paid, by the employer under the *Long Service Leave Act 1976*, section 8, the board must make the payment on behalf of the employer, or reimburse the employer, the amount applied for less any other amount outstanding payable by the employer to the board.

93 Evidentiary certificates

(1) In a proceeding for a contravention of section 58 (Quarterly returns by registered employers) or section 59 (Quarterly returns by registered contractors), a certificate signed by or for the registrar to the effect of any of the following is evidence of the matters stated in the certificate:

(a) that the registrar had allowed a stated person an additional stated period to give to the board a return under that section for a stated quarter;

(b) that the registrar had not allowed a stated person an additional period to give to the board a return under that section for a stated quarter;

(c) that a stated person had given to the board a return under that section for a stated quarter on a stated date;

(d) that a stated person had not given to the board a return under that section for a stated quarter on or before a stated date.

(2) In a proceeding (including a proceeding for a contravention of section 60 (Quarterly levy payments), a certificate signed by or for 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 that section was payable by a stated person for a stated quarter;

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

(c) that, on a stated date, a stated person paid to the board a stated amount of levy under that section that was payable by the person for a stated quarter.

(3) Unless the contrary is proved, a document that purports to be a certificate mentioned in subsection (1) or (2) is taken to be such a certificate.

1 (4) In this section:

2 *stated* means stated in the certificate.

3 **94 Approved forms**

4 (1) The registrar may, in writing, approve forms for this Act.

5 (2) If the registrar approves a form for a particular purpose, the
6 approved form must be used for that purpose.

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

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

9 **95 Regulation-making power**

10 The Executive may make regulations for this Act.

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

- 1 **Part 11** **Transitional and saving**
2 **provisions**
- 3 **Division 11.1** **General**
- 4 **96** **Definitions for pt 11**
- 5 In this part:
- 6 *commencement day* means the day the *Long Service Leave*
7 *(Contract Cleaning Industry) Act 1999* is repealed.
- 8 *repealed Act* means the *Long Service Leave (Contract Cleaning*
9 *Industry) Act 1999*, in force immediately before its repeal.
- 10 **Division 11.2** **Previous service and registration**
- 11 **97** **Meaning of *eligible worker***
- 12 In this division:
- 13 *eligible worker* means a worker who had recognised service as an
14 employee under the repealed Act.
- 15 **98** **Recognition of service in contract cleaning industry**
- 16 (1) In working out an eligible worker's entitlement to a long service
17 benefit under this Act, the worker's recognised service is taken to
18 include the worker's recognised service under the repealed Act.
- 19 (2) For subsection (1), the amount of the worker's recognised service
20 under the repealed Act is to be worked out in accordance with that
21 Act.
- 22 (3) An eligible worker is not entitled to a long service benefit under this
23 Act in relation to recognised service under the repealed Act if a long
24 service benefit is, or has been, provided under that Act (because of
25 an accrued entitlement) in relation to that service.

1 **99 Automatic registration—employers and employees**
2 **registered under repealed Act**

- 3 (1) A person registered as an employer under the repealed Act is taken
4 to have been registered as an employer under this Act on the
5 commencement day.
- 6 (2) A person registered as an employee under the repealed Act is taken
7 to have been registered as an employee under this Act on the
8 commencement day.
- 9 (3) For a person to whom subsection (1) or (2) applies, the registrar
10 must enter in the appropriate register under this Act the particulars
11 that were entered in the corresponding register under the repealed
12 Act.

13 **Division 11.3 Assets and liabilities of former**
14 **board**

15 **100 Definitions for div 11.3**

16 In this division:

17 *former board* means the Contract Cleaning Industry Board under
18 the repealed Act.

19 *new board* means the Private Sector Long Service Leave Board
20 established under this Act.

21 **101 Vesting of assets and liabilities of former board in new**
22 **board**

- 23 (1) The assets and liabilities of the former board vest in the new board.
- 24 (2) To avoid any doubt, the liabilities of the former board include its
25 obligation to pay the accrued entitlements of registered employees
26 under the repealed Act.

- 1 (3) If an asset or liability that vests in the new board is mentioned in a
2 contract, agreement or arrangement, a reference in the contract,
3 agreement or arrangement to the former board is, in relation to
4 anything happening or to happen in relation to the asset or liability
5 after the vesting of the asset or liability in the new board, a reference
6 to the new board.

7 **102 Evidentiary certificate for vested assets and liabilities**

- 8 (1) The chief executive may certify that an asset or liability has vested
9 in the new board under section 101.
- 10 (2) A certificate under subsection (1) is evidence of the matters it states.

11 **103 Registration of changes in title to certain assets**

- 12 (1) This section applies if—
- 13 (a) a registrable asset vests in the new board under section 101
14 (Vesting of assets and liabilities of former board in new board);
15 and
- 16 (b) the chief executive gives the registering authority for the asset
17 a certificate under section 102 for the asset.
- 18 (2) The registering authority must make the entries in the appropriate
19 register kept by the registering authority, and do anything else
20 necessary or desirable, to reflect the vesting of the asset in the new
21 board.
- 22 (3) The evidentiary value of a register mentioned in this section is not
23 affected by—
- 24 (a) the making of an entry under this section; or
- 25 (b) the failure to make an entry under this section; or
- 26 (c) the failure by the chief executive to give a certificate to the
27 registering authority for a registrable asset.

1 (4) In this section:

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

5 *registrable asset* means an asset, including an interest in land,
6 particulars of the ownership of which are required or permitted
7 under Territory law to be entered in a register.

8 **104 Proceedings and evidence in relation to vested assets**
9 **and liabilities**

10 (1) This section applies in relation to an asset or liability that vests in
11 the new board under section 101 (Vesting of assets and liabilities of
12 former board in new board).

13 (2) If a proceeding had been begun in relation to the asset or liability
14 before it vested in the new board and the former board is a party to
15 the proceeding, the new board is substituted for the former board as
16 a party to the proceeding.

17 (3) If a proceeding could have been begun by or against the former
18 board in relation to the asset or liability before it vested in the new
19 board, the proceeding may be begun by or against the new board.

20 (4) The *Limitation Act 1985* applies to a cause of action that accrued to
21 or against the former board in relation to the asset or liability as if
22 the cause of action had accrued to or against the new board when it
23 accrued to or against the former board.

24 (5) The court or other entity in which a proceeding is begun or
25 continued by or against the new board in relation to the asset or
26 liability may give directions about the conduct of the proceeding.

27 (6) Any evidence that would have been admissible for or against the
28 former board in the proceeding is admissible for or against the new
29 board.

1 (7) In this section:

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

5 **Division 11.4 Other provisions**

6 **105 Regulations modifying pt 11**

- 7 (1) The regulations may modify the operation of this part to make
8 provision in relation to any matter that is not, or is not in the
9 Executive's opinion, adequately dealt with in this part.
- 10 (2) Without limiting subsection (1), the regulations may make provision
11 in relation to a matter arising out of the administration of the
12 repealed Act, including, for example—
- 13 (a) the declaration of people to be employers, contractors or
14 workers; and
 - 15 (b) applications made or pending;
 - 16 (c) certificates (including evidentiary certificates);
 - 17 (d) exemptions; and
 - 18 (e) returns by employers; and
 - 19 (f) requests or requirements made; and
 - 20 (g) elections by registered employees or registered contractors.

21 **106 Expiry of pt 11**

22 This part expires 2 years after the day it commences.

1 **Part 12** **Repeal and consequential**
 2 **amendments**

3 **107 Act repealed**

4 The *Long Service Leave (Contract Cleaning Industry) Act 1999*
 5 No 85 is repealed.

6 **108 Acts amended—sch 2**

7 Schedule 2 amends the Acts mentioned in it.

Schedule 1 Review of decisions

(see s 89 and 90)

Part 1.1 Board's decisions

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
1	section 45 (Dealing with applications)	directing the registrar to refuse to register a person as an employer	applicant for registration as an employer
2	section 52 (Application for registration by workers)	directing registrar to refuse to register a person as worker	applicant for registration as an worker
3	section 64 (Exemption from levy payments—working directors)	that the board is not satisfied that a person to whom a notice under s 64 (1) relates is a working director	employer applying for exemption from payments for working director
4	section 68 (Board's assessment of ordinary remuneration)	fixing under s 68 another amount as the total ordinary remuneration of a worker for a quarter	worker whose ordinary remuneration the board believes is insufficient
5	section 74 (Objection to matter stated in annual certificate)	allowing or not allowing an objection to matter stated in an annual certificate	employer to whom certificate given

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
6	section 81 (Grant of employee's leave)	allowing or not allowing an additional period	applicant employer or employee
7	section 84 (Payment instead of leave—employees)	being unsatisfied that an applicant is entitled to payment	applicant
8	sections 83 (Payment for leave—employees), 84 (Payment instead of leave—employees), 85 (Payments to eligible contractors) or 92 (Benefits under Long Service Leave Act 1976)	refusing to make a payment	applicant

Part 1.2 Registrar's decisions

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
1	section 45 (Dealing with applications)	refusing to register person as employer	applicant
2	section 58 (Quarterly returns by registered employers)	refusing to allow a longer period for giving a return to board	employer
3	section 63 (Failure to give quarterly returns or make quarterly payments)	refusing to remit all or part of an amount	applicant

Schedule 2 Consequential amendments

(see s 108)

Part 2.1 Long Service Leave Act 1976

[2.1] Act amended—pt 2.1

This part amends the *Long Service Leave Act 1976*.

[2.2] Interpretation for Act Section 2 (3) and (4)

omit

[2.3] Section 2

*renumber subsections when Act next republished under the
Legislation Act*

[2.4] New section 2A

insert

2A Entitlements to benefits under this Act and prescribed laws

(1) In this section:

prescribed law means—

- (a) the *Long Service Leave (Building and Construction Industry)
Act 1981*;
- (b) the repealed *Long Service Leave (Contract Cleaning Industry)
Act 1999*;
- (c) the *Long service Leave (Private Sector) Act 2003*.

- 1 (2) This section applies to a registered employee under a prescribed law
2 who—
3 (a) elects to take long service benefits under that law in relation to
4 a period of recognised service; and
5 (b) but for that election, would be entitled to long service benefits
6 under that law and this Act in relation to that period of service.
7 (3) The registered employee is entitled to a long service benefit under
8 this Act in relation to the period of service but only to the extent to
9 which the benefit is greater than that provided under the prescribed
10 law.

11 **Part 2.2 Long Service Leave (Building**
12 **and Construction Industry)**
13 **Act 1981**

14 **[2.5] Act amended—pt 3**

15 This part amends the *Long Service Leave (Building and*
16 *Construction Industry) Act 1981*.

17 **[2.6] New part 8A**

18 *insert*

19 **Part 8A Recognised service under the**
20 **Private Sector Act**

21 **100 Definitions for pt 8A**

22 In this part:

23 *eligible person* means a registered employee or registered contractor
24 who also has recognised service under the Private Sector Act.

25 *long service benefit* means long service leave, or payment instead of
26 leave, under this Act.

Private Sector Act means the *Long Service Leave (Private Sector) Act 2003*.

101 Recognition of service under Private Sector Act

- (1) In working out an eligible person's entitlement to a long service benefit under this Act, the person's recognised service is taken to include the person's recognised service under the Private Sector Act.
- (2) For subsection (1), the amount of the person's recognised service under the Private Sector Act is to be worked out in accordance with that Act.
- (3) In working out the amount to be paid under section 57 (Amount of payment) to a person who is a registered employee whose period of recognised service includes recognised service under the Private Sector Act (the *private sector service*), the following days are to be excluded from the period of private sector service:
 - (a) the number of days during the assessment time when the applicant was absent from employment in the building and construction industry and was paid, or was entitled to be paid, ordinary remuneration, or compensation under the *Workers Compensation Act 1951*, by an employer in that industry, being days that are not credited to the applicant as service in the employees and contractors register;
 - (b) the number of public holidays and award holidays during the assessment time.
- (4) An eligible person is not entitled to a long service benefit under this Act in relation to recognised service under the Private Sector Act if a long service benefit is, or has been, provided under that Act in relation to that service.

Dictionary

(see s 3)

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

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- administrative appeals tribunal
- appoint
- chief executive
- contravene
- disallowable instrument
- document
- Executive
- exercise
- function
- in relation to
- public servant
- quarter
- the Territory.

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

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

award holiday, for part 8 (Long service leave and payments)—see section 75.

board means the Private Sector Long Service Leave Board established by section 13.

building and construction industry—see the *Long Service Leave (Building and Construction Industry) Act 1981*, section 3 (1).

1 ***Building and Construction Industry Act***, for part 9 (Recognised
2 service under Building and Construction Industry Act)—see
3 section 87.

4 ***building and construction industry employer***—see the *Long*
5 *Service Leave (Building and Construction Industry) Act 1981*,
6 section 3 (1).

7 ***chairperson*** means the chairperson of the board.

8 ***contractor***—see section 9.

9 ***day***, in relation to an employee—see section 12.

10 ***deputy chairperson*** means the deputy chairperson of the board.

11 ***deputy registrar*** means the deputy long service leave registrar under
12 section 34.

13 ***eligible worker***—

14 (a) for part 9 (Recognised service under Building and Construction
15 Industry Act)—see section 87; and

16 (b) for division 11.2 (Previous service and registration)—see
17 section 97.

18 ***employee*** means a worker other than a contractor.

19 ***employer***—see section 7.

20 ***former board***, for division 11.3—see section 100.

21 ***inspector*** means a person who is an inspector under section 36.

22 ***levy*** means the levy determined under section 62.

23 ***long service benefit***—see section 87.

24 ***long service leave formula***—see section 76.

25 ***member*** means a member of the board.

26 ***new board***, for division 11.3—see section 100.

- 1 **ordinary remuneration**, in relation to a worker, means the total of—
- 2 (a) the salary or wages payable to the worker; and
- 3 (b) any allowances payable to the worker in relation to skill,
- 4 qualifications, board and lodging; and
- 5 (c) any amounts payable to the worker under a bonus, performance
- 6 pay or incentive scheme, being amounts that are usually paid to
- 7 the worker with his or her salary or wages; and
- 8 (d) if the worker is provided with board and lodging by the
- 9 employer, an amount equal to the value of that board and
- 10 lodging.
- 11 **payment instead of leave** means payment under section 84
- 12 (Payment instead of leave—employees).
- 13 **quarterly return**—see section 56.
- 14 **recognised service**—see section 78.
- 15 **registered worker**, for part 8 (Long service leave and payments)—
- 16 see section 75.
- 17 **registrar** means the long service leave registrar under section 34.
- 18 **reviewable decision**—see section 89.
- 19 **work**—see section 11.
- 20 **worker**—see section 8.
- 21 **workers register**—see section 51.
- 22 **working director** means a person who is both a director and an
- 23 employee of a company if—
- 24 (a) the company has no other employees; or
- 25 (b) all of the employees of the company are also directors.

Endnotes

Republications of amended laws

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

Penalty units

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