



Australian Capital Territory

Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007

A2007-18

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Australian Capital Territory

Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007

A2007-18

An Act to amend the *Long Service Leave (Building and Construction Industry) Act 1981* and the *Long Service Leave (Contract Cleaning Industry) Act 1999*

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

J2005-960

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

Part 1 Preliminary

1 Name of Act

This Act is the *Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007*.

2 Commencement

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

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

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

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

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

3 Legislation amended—pt 2

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

Note The Act is also amended in sch 1, pt 1.1 and sch 2, pt 2.1.

4 Sections 5, 6 and 7

substitute

5 Meaning of *building and construction industry*

- (1) For this Act, the *building and construction industry*, in relation to industry in the ACT, is the industry of constructing, reconstructing, renovating, altering, demolishing or maintaining the following:
- (a) buildings, fences or swimming pools;
 - (b) roadworks, railways, airfields or other works for the carriage of people, animals or vehicles;
 - (c) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of a harbour, river or watercourse for the purpose of navigation;
 - (d) works for the storage or supply of water or the irrigation of land;
 - (e) works for the carriage, treatment or disposal of sewage or the effluent from any premises;
 - (f) bridges, viaducts, aqueducts, tunnels or pipelines;

- (g) chimneystacks, cooling towers, drilling rigs, gas holders or silos;
 - (h) structures, fixtures or works for use in any building or works mentioned in paragraphs (a) to (g);
 - (i) navigational lights, beacons or markers;
 - (j) works for the drainage of land;
 - (k) works for the storage of liquids (other than water) or gases;
 - (l) works for the transmission of electric power or wireless or telegraphic communications.
- (2) Also for this Act, the ***building and construction industry***, in relation to industry in the ACT, includes the following for building or other works mentioned in subsection (1):
- (a) pile driving and site preparation;
 - (b) installing data cabling or security or electronic communication systems;
 - (c) laying floor coverings;
 - (d) hard landscaping.
- (3) For this Act, the ***building and construction industry***, in relation to industry carried out in a reciprocating State, is 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).

5A Meaning of *building and construction work*

- (1) For this Act, ***building and construction work*** is work carried out in the ACT in the building and construction industry—
- (a) to which an award prescribed by regulation relates; or

- (b) by an employee supervising work carried out in the industry.
- (2) For this Act, work carried out by a person outside the ACT is taken to be ***building and construction work*** if the work would, if carried out in the ACT, be building and construction work and—
- (a) if the person is a registered employee—the employee’s employer gives the authority a return under section 37 (Quarterly returns by employers) for the work and pays to the authority the amount payable under section 37AB (Determination of levy—employers) for the quarter to which the return relates; or
 - (b) if the person is a registered contractor—the contractor gives the authority a return under section 38 (Quarterly returns by contractors) for the work and pays to the authority the amount payable under section 38B (Determination of levy—contractors) for the quarter to which the return relates.

6 Who is an employer?

- (1) For this Act, an ***employer*** is a person who employs someone else to carry out building and construction work.
- (2) However, the following are not ***employers*** for this Act:
 - (a) the Territory;
 - (b) the Commonwealth;
 - (c) the Australian National University;
 - (d) the University of Canberra.

7 Meaning of ***contractor***, ***employee*** and ***worker***

- (1) For this Act, a ***contractor*** is an individual (other than an employee) who carries out work in the building and construction industry for reward on the individual’s own account.

- (2) For this Act, an *employee* is an individual who is employed by an employer to carry out building and construction work, and includes the following:
- (a) an apprentice;
 - (b) an individual remunerated at piecework rates;
 - (c) a registered employee who is temporarily not employed in the building and construction industry.

Note For removal from the workers register, see s 45.

- (3) For this Act, a person may be an *employee* even though the person is paid completely or partly by commission.
- (4) For this Act, a *worker* is—
- (a) a contractor; or
 - (b) an employee.

5 Section 10

substitute

10 Functions of authority

- (1) The authority has the following functions:
- (a) administering the scheme of long service leave benefits established under this Act;
 - (b) making payments under this Act;
 - (c) keeping the employers register and workers register;

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

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

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

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

omit

Treasurer

substitute

Minister

7 Section 27

substitute

27 Application for registration by employers

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

Maximum penalty: 50 penalty units.

Note If a form is approved under s 65 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) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).

8 Sections 29 and 30

substitute

29 Certificate of registration for employers

- (1) The registrar must give a person registered as an employer under section 28A a certificate of registration that includes—
- (a) the person's registration day under the section; and
 - (b) when the certificate of registration ends.

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 If a form is approved under s 65 for a certificate, the form must be used.

- (2) An employer's certificate of registration must not be issued for more than 1 year.
- (3) If a registered employer's certificate of registration ends, the registrar must give the employer another certificate of registration.
- (4) 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.
- (5) An employer's certificate of registration is evidence of the matters stated in the certificate.

30 Registered employers 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 for the remainder of the term of the returned certificate.

9 Sections 31 to 35

substitute

31 Workers register

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

32 Applications for registration by workers

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

Note If a form is approved under s 65 for an application, the form must be used.

32A Application by employer for registration of employee

- (1) This section applies if a person is an employee of an employer and the person—
 - (a) is not registered under this Act; and

(b) has not applied for registration under section 32 before the end of 3 months after the day the person began building and construction work for the employer.

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

Note If a form is approved under s 65 for an application, the form must be used.

33 How applications for registration as worker are dealt with

(1) This section applies if—

(a) a person applies under section 32 for registration as a worker; or

(b) an employer applies under section 32A for the registration of a person as a worker.

(2) The registrar must—

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

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

34 Notice of registrar's decisions

(1) The registrar must, not later than 7 days after making a decision under section 33, give written notice of the decision to—

(a) the applicant for registration; and

(b) for an application by an employer under section 32A (Application by employer for registration of employee)—the person in relation to whom the application was made.

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

-
- (2) If the decision is to register the person as a worker, the notice must state the person's registration day as a worker.
 - (3) If the 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 35.

35 Appeals against refusal of registrar to register

- (1) This section applies if the registrar has refused under section 33 (How applications for registration as worker are dealt with) to register a person as a 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 application by an employer under section 32A (Application by employer for registration of employee)—the person in relation to whom the application was made.

Note If a form is approved under s 65 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 person.
- (4) 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.

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

- (a) the applicant;
- (b) for an application by an employer under section 32A—the person in relation to whom the application was made.

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

10 Section 36

substitute

36 Registration as worker

(1) A person is registered as a worker when the registrar enters the following particulars in the workers register:

- (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 recognised prior service for the person;
- (e) any other relevant particulars the governing board reasonably directs.

(2) In this section:

recognised prior service, for a person, means the service credited to the person under either or both of the following:

- (a) section 36A (Service credit—employee's prior service);
- (b) section 36B (Service credit—contractor's prior service).

- (3) For this Act:

registration day, in relation to a worker, means the day the application for registration as a worker is received by the registrar.

36A Service credit—employee’s prior service

- (1) The governing board may credit an employee who is registered as a worker with 1 day’s service in the workers register for each weekday, or part of a weekday, in the 4-year period before the person’s registration day the person was employed in the building and construction industry if the person’s employer has given the authority, in relation to the person for the day—
- (a) a return under section 37 (Quarterly returns by employers); and
 - (b) payment under section 37AB (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 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 building and construction industry.

Example

The governing board is satisfied that Andrew, in the 1-year period before his registration day, had separate periods of service as an employee in the building and construction industry of 25 and 125 weekdays. The governing board may credit Andrew 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).

- (3) In this section:

amending Act means the *Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007*.

payment under section 37AB includes a payment under section 37 (Periodic notices and payments by employers) as in force before the commencement of the amending Act.

return under section 37 includes a notice under section 37 (Periodic notices and payments by employers) as in force before the commencement of the amending Act.

- (4) Subsection (3) and this subsection expire 4 years after the day this subsection commences.

36B Service credit—contractor’s prior service

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

- (a) either—
- (i) the person worked as a contractor in the building and construction industry and for which the person has a record of the particulars mentioned in section 39A (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 building and construction industry; and

- (b) the person pays to the authority the amount determined under section 38B (Determination of levy—contractors) in relation to the person for the day.

11 Section 37

substitute

37 Quarterly returns by employers

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

Maximum penalty: 20 penalty units.

Note If a form is approved under section 65 for a return, the form must be used.

- (2) Subsection (1) does not apply in relation to an employee who—
- (a) is an unregistered employee; and
- (b) was not recorded as an employee in the employer's previous quarterly return; and
- (c) carried out building and construction 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) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).

(5) In this section:

required information, for an employer, means—

- (a) the name of each of the employer's employees who carried out building and construction work for the employer during the quarter; and
- (b) for each of the employees—
 - (i) the total ordinary remuneration paid or payable by the employer to the employee for building and construction 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.

37AA Levy payments by employers

(1) A person who is an employer during a quarter must, when the person gives the authority a return under section 37, pay to the authority the amount of the levy payable under section 37AB for the quarter.

Maximum penalty: 20 penalty units.

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

37AB Determination of levy—employers

- (1) The Minister may determine the levy payable by employers 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.
- (3) Before making a determination, the Minister must have regard to the 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.

37AC Civil penalty—failure by employers to give quarterly returns or make levy payments

- (1) This section applies if an employer fails to—
 - (a) give the authority a return in accordance with section 37 (Quarterly returns by employers); or
 - (b) pay the authority the amount payable under section 37AB.
- (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

If an employer 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 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 make the remission.
- (4) If a court finds a person guilty of an offence against section 37 (1) (Quarterly returns by employers) or section 37AA (1) (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 37AA (1)—the amount of the levy to which the prosecution relates.
- (5) An order under subsection (4) is enforceable as a judgment of the court.

37AD Exemption from levy payments—payments to reciprocal authorities

- (1) This section applies if—
 - (a) an employee carries out building and construction work in the ACT for a period of not more than 1 year; and
 - (b) the employee's employer makes payment for the work to a reciprocal authority with which the employee is registered.

- (2) The governing board may, on application by the employer, exempt the employer from payment of an amount payable under section 37AB (Determination of levy—employers) in relation to the ordinary remuneration for the work.
- (3) If the governing board gives the employer an exemption under subsection (2), the work to which the exemption relates is taken not to be building and construction work for this Act.

12 Section 38

substitute

38 Quarterly returns by contractors

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

Maximum penalty: 20 penalty units.

Note If a form is approved under section 65 for a return, 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) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).

(4) In this section:

required information, for a registered contractor, means—

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

38A Levy payments by contractors

(1) A person who is a registered contractor during a quarter must, when the person gives the authority a return under section 38, pay to the authority the amount of the levy payable under section 38B for the quarter.

Maximum penalty: 20 penalty units.

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

38B Determination of levy—contractors

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

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

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

- (3) Before making a determination, the Minister must have regard to the 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.

13 New section 39A

insert

39A Registered contractors to keep records

- (1) A registered contractor 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 in the building and construction industry by the contractor;
 - (c) when and for whom the building and construction work was carried out;
 - (d) the contractor's ordinary remuneration for each quarter;
 - (e) the number of days worked by the contractor in the building and construction in each quarter.

Maximum penalty: 20 penalty units.

- (2) A registered contractor must keep a written record mentioned in subsection (1) for 6 years after the day the record was made.

Maximum penalty: 20 penalty units.

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

14 Sections 41 and 42*substitute***41 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 37 (Quarterly returns by employers) or section 38 (Quarterly returns by contractors) for a quarter is insufficient or excessive because of the nature of the building and construction 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 37—the employer who submitted the return and the employee;
 - (b) for a return under section 38—the contractor.
- (3) A person mentioned in subsection (2) (a) or (b) may, not later than 1 month after being given the notice, by written statement to the governing board, ask the board to—
 - (a) take into account any matter set out in the statement; and
 - (b) arrange for the person to appear before the 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 statement and 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.

41A Notice of governing board's decision on review of ordinary remuneration

- (1) The governing board must, not later than 7 days after it makes a decision under section 41 (5), give written notice of the decision to—
 - (a) if the decision relates to a return under section 37—the employer who submitted the return and the employee; or
 - (b) if the decision relates to a return under section 38—the contractor.
- (2) If the decision is to fix another amount under section 41 (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 41B and section 41C (Variation of ordinary remuneration—payment of additional amount of levy).

Note The notice must also comply with the *Administrative Appeals Tribunal Act 1989*, section 25B (1) (see s 59A (3)).

41B Effect of variation of ordinary remuneration

- (1) This section applies if the governing board fixes an amount under section 41 (5) (b) (the *varied amount*) in relation to a worker.
- (2) The varied amount is taken, for this Act, to be the worker's total ordinary remuneration for building and construction work by the worker for the quarter.

- (3) The following provisions apply if the varied amount relates to a return under section 37 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 to the authority the additional amount payable under section 37AB (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 amount of the levy payable under section 37AB—refund the amount; or
 - (ii) in any other case—credit the amount against future amounts payable under section 37AB by the employer.
- (4) The following provisions apply if the varied amount relates to a return under section 38 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 to the authority the additional amount payable under section 38B (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 amount of the levy payable under section 38B—refund the amount; or
 - (ii) in any other case—credit the amount against future amounts payable under section 38B by the contractor.

41C Variation of ordinary remuneration—payment of additional amount of levy

- (1) A person who must pay an amount under section 41B (3) (a) or (4) (a) must pay the amount to the authority not later than—
 - (a) 1 month after the day the person receives notice under section 41A of the governing board's decision; or
 - (b) the end of any additional time the registrar allows.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) The registrar may allow additional time for subsection (1) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).

42 Service credit—registered worker's service

- (1) This section applies in relation to a registered worker's service on or after the worker's registration day.

Note See s 36A and s 36B for crediting of service prior to the worker's registration day.
- (2) A registered employee must be credited in the workers register with 1 day's service for—
 - (a) each weekday, or part of a weekday, in relation to which the employee's employer has paid to the authority the amount payable under section 37AB (Determination of levy—employers) in relation to the employee; or
 - (b) each weekday the employee does not carry out building and construction work because the employee has been dismissed by an employer to ensure that the worker does not take long service leave while in the employer's employment.

- (3) However, a registered employee must not be credited with—
 - (a) more than 220 days service for each year ending 30 June; or
 - (b) more than 4 years service for any 1 period mentioned in subsection (2) (b).
- (4) Further, a registered employee may be credited with a period of service for which payment has not been made to the authority under section 37AB if—
 - (a) the employee's employer has ceased to employ anyone to carry out building and construction work; and
 - (b) the registrar is satisfied that the employee would, but for the employer's failure to make the payment, be entitled to be credited in the workers register with the period of service.
- (5) A registered contractor must be credited in the workers register with 1 day's service for each weekday, or part of a weekday, on which the contractor carried out building and construction work and for which the contractor has paid to the authority the amount payable under section 38B (Determination of levy—contractors).
- (6) However, a registered contractor must not be credited with—
 - (a) more than 220 days service for each year ending 30 June; or
 - (b) more than 1 day's service for any 2 or more parts of the same weekday.

15 Sections 53 and 54

substitute

53 Entitlement to payment instead of leave

- (1) This section applies to a registered worker who has at least 5 years recognised service if—
 - (a) the worker has permanently left the building and construction industry; and
 - (b) at least 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 has at least 55 days recognised service and any of the following apply to the worker:
 - (a) the worker has left the building and construction 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 if—
 - (a) the worker has at least 10 years recognised service; 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.

16 Sections 56A, 56B and 57

substitute

56A How are leave payments worked out?

- (1) For section 55 (Payment for leave) and section 56 (Payment instead of leave), 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 56B; and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 56C.
- (2) For subsection (1)—
 - (a) long service leave must be taken in the order in which it accrued; and

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

Example—s 56A

Chummy 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. Chummy then worked as a registered contractor and accrued 6 weeks of the entitlement in that capacity.

Chummy 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 56B 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 56C which is the total of the amounts paid to authority under section 38B 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 56C 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).

56B Leave payments for service as registered employee

- (1) For section 56A, the amount payable to a registered worker for long service leave for service accrued as a registered employee is the amount worked out in accordance with the following formula:

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

(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.

Note **Defined fraction**—see the dictionary.

designated day means—

- (a) for a registered worker taking long service leave—the day the leave begins; and
- (b) for a registered worker 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.

56C Leave payments for service as registered contractor

- (1) For section 56A (How are leave payments worked out?), the amount payable to a registered worker 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 38B (Determination of levy—contractors);
 - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 38B 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 in accordance with the following formula:

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

- (4) In this section:

designated day—see section 56B.

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.

56D Payment by authority on reciprocal authority's behalf

- (1) This section applies to a registered worker 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 65 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.

57 Payments by reciprocal authority on authority's behalf

- (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.

- (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 in accordance with the following formula:

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

- (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.

Note **Defined fraction**—see the dictionary.

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.

17 New section 59C

insert

59C 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, dict, pt 1.

18 Section 61

substitute

61 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.

19 New part 15

insert

Part 15 Transitional**200 Transitional—change from 2 monthly to quarterly returns**

- (1) This Act applies in relation to a declared return period as if the period were a quarter.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (3) In this section:

declared return period means the period prescribed by regulation.

201 Employers and employees and contractors registers

- (1) The Long Service Leave (Building and Construction Industry) Register of Employers under section 26 (Employers register) as in force immediately before the commencement of this section is, immediately after the commencement, taken to be the employers register.
- (2) The Long Service Leave (Building and Construction Industry) Register of Employees and Contractors under section 31 (Employees and contractors register) as in force immediately before the commencement of this section is, immediately after the commencement, taken to be the workers register.

202 Repeal of s 43 and s 44

Section 43 (Bonus credits for employees and contractors) and section 44 (Bonus credits for apprentices) are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Note Sections 43 and 44 are repealed in sch 1.1.

203 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007*.
- (2) A regulation may modify this part (including its operation 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 part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

204 Expiry—pt 15

This part expires 1 year after the day this section commences.

20 Dictionary, definition of *working day*

omit

21 Dictionary, definition of *working director*

substitute

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

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

22 Legislation amended—pt 3

This part amends the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

Note The Act is also amended in sch 1, pt 1.2 and sch 2, pt 2.2.

23 Long title

substitute

An Act to provide for long service leave for workers in the contract cleaning industry

24 Sections 3 to 4

substitute

3 Meaning of *contract cleaning industry*

For this Act, 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).

3A Meaning of *cleaning work*

- (1) For this Act, *cleaning work* is—
- (a) work carried out in the ACT that has, as its sole or main component, the bringing of premises into, or maintaining premises in, a clean condition; or
- Note* See s 40A (3) for when cleaning work is taken not to be cleaning work.
- (b) work declared by the Minister under section 3D (1) (d) (Declarations by Minister about coverage of Act) to be cleaning work.
- (2) Work carried out by a person outside the ACT is taken to be *cleaning work* if the work would, if carried out in the ACT, be cleaning work and—
- (a) if the person is a registered employee—the worker’s employer gives the authority a return under section 39 (Quarterly returns by employers) for the work and pays to the authority the amount payable under section 39B (Determination of levy—employers) for the quarter to which the return relates; or
 - (b) if the person is a registered contractor—the contractor gives the authority a return under section 41A (Quarterly returns by contractors) for the work and pays to the authority the amount payable under section 41C (Determination of levy—contractors) for the quarter to which the return relates.

3B Who is an *employer*?

- (1) For this Act, an *employer* is a person engaged in the contract cleaning industry in the ACT who—
- (a) employs 1 or more employees (whether in the ACT or elsewhere) to carry out cleaning work; or

- (b) is declared to be an employer under section 3D (1) (a) (Declarations by Minister about coverage of Act).
- (2) However, the following are not *employers* for this Act:
- (a) the Territory;
 - (b) the Commonwealth;
 - (c) the Australian National University;
 - (d) the University of Canberra.

3C Meaning of *contractor*, *employee* and *worker*

- (1) For this Act, a *contractor* is—
- (a) an individual (other than an employee) who carries out cleaning work for reward on the individual's own account; or
 - (b) an individual who is declared to be a contractor under section 3D (1) (b).
- (2) For this Act, an *employee* is an individual who is—
- (a) employed by an employer to carry out cleaning work (whether in the ACT or elsewhere) and includes the following:
 - (i) a part-time employee;
 - (ii) a casual employee;
 - (iii) an employee remunerated at piecework rates; or
 - (b) an individual who is declared to be an employee under section 3D (1) (c).
- (3) For this Act, a *worker* is—
- (a) a contractor; or
 - (b) an employee.

3D Declarations by Minister about coverage of Act

- (1) The Minister may declare—
 - (a) a stated person to be an employer; or
 - (b) a stated individual to be a contractor; or
 - (c) a stated individual to be an employee, or an employee of a stated employer; or
 - (d) a kind of work to be cleaning work.
- (2) For this Act, a person declared under subsection (1) (a) to be an employer is taken to be engaged in the contract cleaning industry.
- (3) For this Act, an individual declared under subsection (1) (b) to be a contractor is taken to be a contractor carrying out cleaning work.
- (4) For this Act, an individual declared under subsection (1) (c) to be an employee of a stated employer is taken to be employed by the employer to carry out cleaning work.
- (5) A declaration is a disallowable instrument.

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

4 What is a *service period*?

- (1) A *service period* of a registered worker is a period—
 - (a) starting on a day when the person becomes a worker for an employer (and is not already a worker for another employer); and
 - (b) ending on the day when the person next stops being a worker for an employer (and is not already a worker for another employer).

- (2) For subsection (1), the continuity of the service period of a registered worker who stops being a worker for an employer but on the next day becomes a worker for another employer is not interrupted by the change of employer.
- (3) For subsection (1), a person stops being an employee for an employer (the *former employer*) if, for the employee's next service period (the *later period*)—
- (a) any return under section 39 (Quarterly returns by employers) by the former employer shows no ordinary remuneration for the employee in the later period; or
 - (b) if the employee had 2 or more employers for the later period—any returns under section 39 by the former employers show no ordinary remuneration for the employee in the later period by each employer.
- (4) Despite subsection (1), a registered worker's service period is taken to include any day when the worker does not carry out cleaning 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 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 38 (3).

25 Section 7

substitute

7 Functions of authority

- (1) The authority has the following functions:
- (a) administering the scheme of long service leave benefits established under this Act;
 - (b) making payments under this Act;
 - (c) keeping the employers register and workers register;
 - (d) any other function given to the authority under this Act or another territory law.

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

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

26 Section 13

substitute

13 Functions of governing board

The governing board has the following functions:

- (a) making recommendations to the Minister under section 39B (Determination of levy—employers) or section 41C (Determination of levy—contractors);

- (b) recommending to the Minister laws to be declared to be corresponding laws under section 63B (Declaration of corresponding laws);
- (c) any other function given to the board under this Act or another territory law.

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

27 Section 23

substitute

23 Money of authority

The money of the authority consists of—

- (a) amounts received by the authority under section 39B (Determination of levy—employers) or section 41C (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) amounts paid to the authority under a reciprocal agreement; and
- (e) any other amounts paid to the authority.

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

omit

Treasurer must, in writing,

substitute

Minister must

29 Sections 34 and 35

substitute

34 Registration as an employer

- (1) A person is registered as an employer when the registrar enters the following particulars in the employers register:
 - (a) the person's name and address;
 - (b) any trading name of the person;
 - (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.
- (2) For subsection (1) (f), the person's registration day as an employer is the date when the person's application for registration as an employer is received by the registrar.

35 Certificate of registration for employers

- (1) The registrar must give a person registered as an employer under section 34 a certificate of registration that includes—
 - (a) the person's registration day under the section; and
 - (b) when the certificate of registration ends.

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 If a form is approved under s 64A for a certificate, the form must be used.

- (2) An employer's certificate of registration must not be issued for more than 1 year.
- (3) If a registered employer's certificate of registration ends, the registrar must give the employer another certificate of registration.
- (4) 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.
- (5) An employer's certificate of registration is evidence of the matters stated in the certificate.

35A Registered employers 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 for the remainder of the term of the returned certificate.

30 Part 4

substitute

Part 4 Registration of workers

36 Workers register

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

37 Application for registration as worker

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

Note If a form is approved under s 64A for an application, the form must be used.

37A How applications for registration as worker are dealt with

- (1) This section applies if a person applies under section 37 for registration as a worker.
- (2) The registrar must—
- (a) if satisfied that the applicant is a contractor—register the applicant as a worker; or
 - (b) if satisfied that the applicant is an employee and that all the applicant's employers since the applicant became an employee are or have been registered employers—register the applicant as a worker; or

- (c) if satisfied that the applicant is an employee but not satisfied that all the applicant's employers since the applicant became an employee are or have been registered employers—refer the application to the governing board; or
 - (d) in any other case—refuse to register the applicant as a worker.
- (3) If the registrar refers the application to the governing board under subsection (2) (c), the board must—
- (a) if satisfied that all employers of the applicant since the person became an employee are or have been registered employers—direct the registrar to register the applicant as a worker; or
 - (b) in any other case—direct the registrar to refuse to register the applicant as a worker.
- (4) The registrar must give an applicant under section 37 written notice of a decision under subsection (3) not later than 7 days after the day the decision is made.

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

37B Notice of registrar's decisions

- (1) The registrar must give an applicant under section 37 written notice of a decision under the section (other than a decision under section 37A (2) (c)) not later than 7 days after the day the decision is made.

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

- (2) If the decision is to register the person as a worker, the notice must state the person's registration day as a worker.
- (3) If the decision is to refuse to register the person under section 37A (2) (d), the notice must include—
- (a) an explanation for the decision; and

(b) a statement of the effect of section 37C.

37C Appeals against refusal of registrar to register

- (1) This section applies if the registrar has refused under section 37A (2) (d) (Application for registration as worker) to register a person as a worker.
- (2) The person may apply to the governing board, in writing, for review of the registrar's decision not later than 2 months after the day notice of the decision is received by the person.

Note If a form is approved under s 64A for an application, 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.

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

37D Governing board may direct registration of employee

- (1) This section applies if—
 - (a) the governing board becomes aware of information (other than because of an application under section 37) indicating that a person is, or was, an employee; and
 - (b) the board is satisfied that the person is, or was, an employee; and

- (c) the board is satisfied that all employers of the person since the person became an employee are or have been registered employers.

Example—par (a)

a quarterly return under section 39 shows the person as an employee

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) The governing board may direct the registrar to register the person as a worker.

38 Registration as worker

- (1) A person is registered as a worker when the registrar enters the following particulars in the workers register:
- (a) the person's name, address and date of birth;
 - (b) the name and address of the principal place of business of each employer for the person;
 - (c) any recognised prior service for the person;
 - (d) any other relevant particulars the governing board reasonably directs.
- (2) In this section:
- recognised prior service***, for a person, means the service credited to the person under either or both of the following:
- (a) section 38A (Service credit—employee's prior service);

(b) section 38B (Service credit—contractor’s prior service).

(3) For this Act:

registration day, in relation to a worker, means—

- (a) for an applicant under section 37 (Application for registration as worker)—the day the application is received by the registrar; or
- (b) for a person for whom a direction is given under section 37D (Governing board may direct registration of employee)—the day the governing board gives the direction.

38A Service credit—employee’s prior service

- (1) The governing board may credit an employee who is registered as a worker with 1 day’s service in the workers register for each day in the 4-year period before the person’s registration day the person was employed in the contract cleaning industry if the person’s employer has given the authority, in relation to the person for the day—
 - (a) a return under section 39 (Quarterly returns by employers); and
 - (b) payment under section 39B (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 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 contract cleaning 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).

- (3) In this section:

amending Act means the *Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007*.

payment under section 39B includes a payment under section 37 (Periodic notices and payments by employers) as in force before the commencement of the amending Act.

return under section 39 includes a notice under section 37 (Periodic notices and payments by employers) as in force before the commencement of the amending Act.

- (4) Subsection (3) and this subsection expire 4 years after the day this subsection commences.

38B Service credit—contractor’s prior service

The governing board may credit a contractor who is registered as a worker with 1 day’s service in the workers register 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 contract cleaning industry and for which the person has a record of the particulars mentioned in section 42A (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 contract cleaning industry; and
- (b) the person pays to the authority the amount determined under section 41C (Determination of levy—contractors) in relation to the person for the day.

31 Section 39

substitute

39 Quarterly returns by employers

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

Maximum penalty: 20 penalty units.

Note If a form is approved under section 64A for a return, the form must be used.

-
- (2) Subsection (1) does not apply in relation to an employee who—
- (a) is an unregistered employee; and
 - (b) was not recorded as an employee in the employer's previous quarterly return; and
 - (c) carried out cleaning 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) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).
- (5) In this section:
- required information*, for an employer, means—
- (a) the name of each of the employer's employees who carried out cleaning work for the employer during the quarter; and
 - (b) the total ordinary remuneration paid or payable by the employer to each employee for cleaning work during the quarter; and
 - (c) anything else prescribed by regulation.

32 Section 40

substitute

40 Civil penalty—failure by employers to give quarterly returns or make levy payments

- (1) This section applies if an employer fails to—
- (a) give the authority a return in accordance with section 39 (Quarterly returns by employers); or

(b) pay the authority the amount payable under section 39B (Determination of levy—employers) for the quarter.

- (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

If an employer 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 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 make the remission.
- (4) If a court finds a person guilty of an offence against section 39 (1) (Quarterly returns by employers) or section 39A (1) (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 39A (1)—the amount of the levy to which the prosecution relates.
- (5) An order under subsection (4) is enforceable as a judgment of the court.

40A Exemption from levy payments—payments to reciprocal authorities

- (1) This section applies if—
 - (a) an employee carries out cleaning work in the ACT for a period of not more than 1 year; and
 - (b) the employee's employer makes payment for the work to a reciprocal authority with which the employee is registered.
- (2) The governing board may, on application by the employer, exempt the employer from payment of an amount payable under section 39B (Determination of levy—employers) in relation to the ordinary remuneration for the work.
- (3) If the governing board gives the employer an exemption under subsection (2), the work to which the exemption relates is taken not to be cleaning work for this Act.

33 New sections 41A, 41B and 41C

insert

41A Quarterly returns by contractors

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

Maximum penalty: 20 penalty units.

Note If a form is approved under section 64A for a return, 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) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).
- (4) In this section:
- required information*, for a registered contractor, means—
- (a) the contractor's total ordinary remuneration for cleaning work during the quarter; and
- (b) anything else prescribed by regulation.

41B Levy payments by contractors

- (1) A person who is a registered contractor during a quarter must, when the person gives the authority a return under section 41A, pay to the authority the amount of the levy payable under section 41C for the quarter.

Maximum penalty: 20 penalty units.

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

41C Determination of levy—contractors

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

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

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

- (3) Before making a determination, the Minister must have regard to the 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.

34 New section 42A

insert

42A Registered contractors to keep records

- (1) A registered contractor 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 in the contract cleaning industry by the contractor;
 - (c) when and for whom the cleaning work was carried out;
 - (d) the contractor's ordinary remuneration for each quarter.

Maximum penalty: 20 penalty units.

- (2) A registered contractor must keep a written record mentioned in subsection (1) for 6 years after the day the record was made.

Maximum penalty: 20 penalty units.

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

35 Section 54*substitute***54 Entitlement to payment instead of leave**

- (1) This section applies to a registered worker who has at least 5 years recognised service if—
 - (a) the worker has permanently left the contract cleaning industry; and
 - (b) at least 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 has at least 55 days recognised service and any of the following apply to the worker:
 - (a) the worker has left the contract cleaning 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.

36 Sections 57 and 58

substitute

57 How are leave payments worked out?

- (1) For section 55 (Payment for leave) and section 56 (Payment instead of leave), 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 57A; and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 57B.
- (2) For subsection (1)—
 - (a) long service leave must be taken in the order in which it accrued; and

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

Example—s 57

Patricia has 10 years of service in the contact 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 section 57A 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 section 57B which is the total of the amounts paid to authority under section 41C 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 section 57B 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).

57A Working out leave payments—registered employees

- (1) For section 57, the amount payable to a registered worker for long service leave for service accrued as a registered employee is the amount worked out in accordance with the following formula:

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

- (2) In this section:

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

designated day means—

- (a) for a registered employee taking long service leave—the day the leave begins; and
- (b) for a registered employee 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 employee during each of the following periods that applies to the employee:

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

Example of R

Henry has worked in the cleaning industry for 7 years. The periods in paragraphs (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).

57B Working out leave payments—registered contractors

- (1) For section 57 (How are leave payments worked out?), the amount payable to a registered worker for long service leave for service accrued as a registered contractor is the total of the following for the service:
 - (a) amounts paid by the contractor to the authority under section 41C (Determination of levy—contractors);
 - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 41C 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 in accordance with the following formula:

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

- (4) In this section:
designated day—see section 57.

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.

57C Payment by authority on reciprocal authority's behalf

- (1) This section applies to a registered worker 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 64A 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.

57D Payments by reciprocal authority on authority's behalf

- (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.

- (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 in accordance with the following formula:

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

- (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.

58 Records of payments and service

- (1) This section applies if the authority—
- (a) pays an amount to a registered worker under section 55 (Payment for leave) or section 56 (Payment instead of leave); or
 - (b) reimburses a reciprocal authority under section 57D (Payments by reciprocal authority on authority's behalf) 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.

37 New section 62A

insert

62A 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, dict, pt 1.

38 New sections 63A and 63B

insert

63A 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.

63B 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.

39 New section 64AA

before section 64A, insert

64AA 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 cleaning work in the contract cleaning 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.

40 New part 15

insert

Part 15 Transitional**200 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Act 2007*.
- (2) A regulation may modify this part (including its operation 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 part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

201 Expiry—pt 15

This part expires 1 year after the day this section commences.

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

insert

contractor—see section 3C.

corresponding law means a law of a State declared under section 63B to be a corresponding law.

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

42 Dictionary, new definition of *ordinary remuneration*

insert

ordinary remuneration, for a person, means the amount paid or payable to the person for cleaning 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.

43 Dictionary, definition of *ordinary wages*

omit

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

insert

reciprocal agreement—see section 64AA.

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).

45 Dictionary, definition of *registered employee*

omit

46 Dictionary, new definition of *registration day*

insert

registration day, in relation to a worker—see section 38 (3).

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

insert

registered worker means an individual who is registered under section 38.

service period—see section 4.

worker—see section 3C.

48 Dictionary, definition of *working director*

substitute

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

Schedule 1 Other amendments

(see s 3 and s 22)

Part 1.1 Long Service Leave (Building and Construction Industry) Act 1981

[1.1] Long title

substitute

An Act to provide for long service leave for workers in the building and construction industry

[1.2] Section 16

substitute

16 Functions of governing board

The governing board has the following functions:

- (a) making recommendations to the Minister under section 37AB (Determination of levy—employers) or section 38B (Determination of levy—contractors);
- (b) recommending to the Minister laws to be declared to be corresponding laws under section 62 (Declaration of corresponding laws);
- (c) any other function given to the board under this Act or another territory law.

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

[1.3] Section 20 heading

substitute

20 Powers in relation to employers' premises

[1.4] Section 22 (1)

omit

section 20 (2) (b) (Powers in relation to premises)

substitute

section 20 (2) (b) (Powers in relation to employers' premises)

[1.5] Section 25A

substitute

25A Money of authority

The money of the authority consists of—

- (a) amounts received by the authority under section 37AB (Determination of levy—employers) and section 38B (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) amounts paid to the authority under a reciprocal agreement; and
- (e) any other amounts paid to the authority.

[1.6] Section 25C heading

substitute

3-yearly investigation by actuary

[1.7] Section 25C (3)

omit

rates of periodic payments payable to the authority by employers and registered contractors

insert

rates of levies payable to the authority by employers or contractors

[1.8] Section 26

substitute

26 Employers register

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

[1.9] Section 28

substitute

28 How applications for registration as employer are dealt with

- (1) This section applies if a person applies to the registrar under section 27 for registration as an employer.
- (2) The registrar must—
 - (a) register the person as an employer if satisfied the person is an employer; or

- (b) refuse to register the person as an employer if not satisfied the person is an employer.

28A Registration as an employer

- (1) A person is registered as an employer when the registrar enters the following particulars in the employers register:
 - (a) the person's name and address;
 - (b) any trading name of the person;
 - (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.
- (2) For subsection (1) (f), the person's registration day as an employer is the date when the person's application for registration as an employer is received by the registrar.

[1.10] Part 4 heading

substitute

Part 4 Registration of workers

[1.11] Part 5 heading

substitute

Part 5 Quarterly returns and payments

[1.12] Section 37A

substitute

37A Exemption from levy payments—working directors

- (1) The authority must, on application by a working director, grant the working director's employer an exemption from payment of an amount payable under section 37AB (Determination of levy—employers) for building and construction work carried out by the working director.

Note If a form is approved under s 65 for an application, the form must be used.

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

[1.13] Section 40

substitute

40 Particulars to be entered in workers register

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

- (a) if the worker is serving a period of apprenticeship in the building and construction industry—the date on which the apprenticeship began;
- (b) if the worker is an employee—the employers to whom the employee's service relates;
- (c) the number of days service with which the worker is credited under this Act;
- (d) the total ordinary remuneration of the worker for building and construction 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 building and construction industry—the date when the worker stopped working in the industry;
- (h) any other relevant particulars the governing board reasonably directs.

[1.14] Sections 43 and 44

omit

[1.15] Section 45

substitute

45 Removing registration from workers register

- (1) The registrar must remove a person's registration 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 a person's registration is removed under subsection (1)—
 - (a) the person stops being a registered worker on the day the registration is removed; and
 - (b) the person is not entitled to apply for, or 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's registration ended.
- (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 section 53 (Entitlement to payment instead of leave).
- (4) The registrar must not remove a person's registration from the workers register if the person stops carrying out building and construction work and tells the authority that the person is otherwise employed or engaged in work in the building and construction industry 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 63 (3) (Benefits under other laws) for payment of the total amount to which the employer is entitled under section 63 (4);

- (c) if the person is a working director or contractor—the person asks the authority to remove the person’s registration from the register;
 - (d) the period of 10 years starting on the day on which the person ceased to carry out building and construction work ends.
- (5) A request under subsection (4) (c) must state—
- (a) the date on which the person became otherwise employed or engaged in work in the building and construction industry; and
 - (b) the name and address of the principal place of business of the person’s employer (if any).
- (6) The governing board must direct the registrar to re-register a person in the workers register if—
- (a) the person’s registration has been removed from the register under subsection (1); and
 - (b) the 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 on which the person’s registration was removed from the register.
- (7) If a person is re-registered under subsection (6), this Act applies in relation to the person as if the person’s registration had not been removed from the register.
- (8) This section does not affect any right that a person whose registration has been removed from the workers register may have to again become a registered worker.

[1.16] Part 7

substitute

Part 7 Annual certificates

46 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 service credited to the worker in the worker's register as at the end of the previous financial year; and
- (b) the number of days service credited to the worker in the workers register for the previous financial year; and
- (c) if the worker is a contractor—the total of the amounts paid by the contractor under section 38B (Determination of levy—contractors) during the previous financial year.

47 Annual certificates for employers

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

- (a) the name of each registered employee of the employer recorded in the workers register; and
- (b) for each registered employee of the employer—
 - (i) the number of days service credited to the employee in the worker's register as at the end of the previous financial year; and

- (ii) the number of days service credited to the employee in the workers register for the previous financial year; and
- (c) the total of all amounts paid by the employer under section 37AB (Determination of levy—employers) for the previous financial year.

48 Objection to matter stated in annual certificate

- (1) A worker or employer who is given a certificate under section 46 or section 47 may, not later than 6 months after being given the certificate, object in writing to the governing board about the accuracy of a matter stated in the certificate.
- (2) If an objection is given to the governing board, the board must decide the objection and must, if it allows the objection, direct the registrar to—
 - (a) make any necessary correction in the workers register; and
 - (b) give an amended certificate to the person who made the objection.

[1.17] Sections 49 to 51

substitute

49 Long service leave

A registered worker is entitled to long service leave in accordance with this Act.

50 Year of service

For this Act, a registered worker 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.

51 Amount of leave

- (1) A registered worker who is credited with a period of recognised service of at least 10 years is entitled to—
 - (a) an amount of long service leave worked out at the rate of the defined fraction of a week's leave for each completed year of service credited to the worker in the workers register; and
 - (b) for any remainder of the period of service credited to the worker in the workers register—an amount of long service leave equal to the period that bears the same proportion to the defined fraction of a week as the remainder bears to 1 completed year of service.

Note **Defined fraction**—see the dictionary.

- (2) A registered worker is entitled to additional long service leave if the worker—
 - (a) becomes entitled to long service leave under this Act; and
 - (b) is credited in the workers register with an additional period of service commencing on the date on which the worker became entitled to the long service leave.

[1.18] Sections 55 and 56

substitute

55 Payment for leave

- (1) A registered employee who has been granted long service leave under section 52, or a registered contractor 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 65 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 56A (How are leave payments worked out?).
- (3) The authority must pay an applicant any amount payable under subsection (2) at least 7 days before the applicant becomes entitled to the long service leave if—
- (a) the application is made at least 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.

56 Payment instead of leave

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

Note If a form is approved under s 65 for an application, the form must be used.

- (2) An application by a registered employee 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 56A (How are leave payments worked out?).

[1.19] Section 57A

substitute

57A Records of payments and service

- (1) This section applies if the authority—
 - (a) pays an amount to a registered worker under section 55 (Payment for leave) or section 56 (Payment instead of leave);
or

- (b) reimburses a reciprocal authority under section 57 (2) (Payments by reciprocal authority on authority's behalf) for an amount paid to a registered worker.
- (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.

[1.20] Section 58

substitute

58 Public holidays etc not to count as leave

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

determination includes a variation, suspension, interpretation or cancellation of a determination.

industry holiday means a day that is a holiday for people employed in the building and construction industry under an award, or a determination or industrial agreement, under the *Workplace Relations Act 1996* (Cwlth).

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

substitute

59 Decisions reviewable by AAT

- (1) A person mentioned in schedule 1, table 1.1, column 3 may apply to the administrative appeals tribunal for review of a decision by the governing board mentioned in column 2 for the person.
- (2) A person mentioned in schedule 1, table 1.2, column 3 may apply to the administrative appeals tribunal for review of a decision by the registrar mentioned in column 2 for the person.

59A Notice of reviewable decisions

- (1) The governing board must give written notice of a decision mentioned in schedule 1, table 1.1, column 2 to the affected person mentioned in column 3 for the decision.
- (2) The registrar must give written notice of a decision mentioned in schedule 1, table 1.2, column 2 to the affected person mentioned in column 3 for the decision.
- (3) A notice under subsection (1) or (2) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

59B Evidentiary certificates

- (1) In a proceeding for an offence against section 37 (Quarterly returns by employers) or section 38 (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 37AA (Levy payments by employers) or section 38A (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.

60 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.

[1.22] Sections 62, 63 and 64

substitute

62 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.

63 Benefits under other laws

- (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 building and construction 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 period of service for which the election is made.
- (3) An employer may apply to the authority for payment of the prescribed amount if the employer has made a payment under the *Long Service Leave Act 1976*, section 8 (Manner of payment for leave) or under a law prescribed by regulation for a registered employee who has elected to take long service benefits under that Act or the prescribed law for a period of service in the building and construction industry.
- (4) If an application is made to the authority under subsection (3) and the governing board is satisfied the amount paid by the employer was properly paid in accordance with the *Long Service Leave Act 1976*, section 8 or prescribed law, the authority must pay the employer the prescribed amount less any amount outstanding that is payable by the employer to the authority.
- (5) For subsections (3) and (4), the ***prescribed amount***, in relation to a registered employee, is the amount worked out in accordance with the following formula:

$$A \times \frac{P1}{P2}$$

- (6) In subsection (5):

A is the amount that would have been payable by the authority to the employee if the employee had been entitled to payment for long service leave under this Act for the period stated by the employee under subsection (2).

P1 is the number of weekdays in the period stated by the employee under subsection (2) that commenced on 1 October 1981 and ending on the date on which the employee became or becomes entitled to long service benefits under the *Long Service Leave Act 1976* or the prescribed law.

P2 is the number of weekdays in the period of service for which the election is made by the employee under subsection (2).

64 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 building and construction work in the building and construction 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 employment 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.

[1.23] Section 65 (1)

omit

, in writing,

[1.24] Section 65 (2), new note

insert

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

[1.25] New schedule 1

insert

Schedule 1 Decisions reviewable by AAT

(see s 59)

Table 1.1 Governing board—decisions reviewable by AAT

column 1 item	column 2 decision	column 3 affected person
1	section 35 (4) (a)—confirming registrar's decision to refuse to register person as worker	<ul style="list-style-type: none"> applicant anyone mentioned in section 35 (2) who is affected by the decision
2	section 36A (2)— <ul style="list-style-type: none"> refusing to credit employee with prior service amount of prior service credited 	employee
3	section 36B (b)— <ul style="list-style-type: none"> refusing to credit contractor with prior service amount of prior service credited 	contractor

column 1 item	column 2 decision	column 3 affected person
4	section 37AD (2)—refusing to exempt employer from levy	employer
5	section 41 (5) (b)—fixing 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
6	section 45 (6) (b)—refusing to direct registrar to re-register person	person
7	section 48 (2)—allowing, or refusing to allow, objection to matter in certificate given to worker under section 46	<ul style="list-style-type: none"> • worker • if the worker is an employee—the worker’s employer
8	section 48 (2)—allowing, or refusing to allow, objection to matter in certificate given to employer under section 47	<ul style="list-style-type: none"> • employer • employee to whom objection relates
9	section 52—refusing to allow additional period	applicant
10	section 53 (3)—not satisfied that section applies to applicant	applicant
11	section 55 (2)—not satisfied that applicant entitled to long service leave	applicant
12	section 56 (6)—not satisfied that applicant entitled to payment instead of long service leave	applicant
13	section 63 (4)—not satisfied that amount paid by employer was properly paid	employer

Table 1.2 Registrar—decisions reviewable by AAT

column 1 item	column 2 decision	column 3 affected person
1	section 27 (1) (b)—refusing to allow additional time for application for registration by employer	employer
2	section 28 (3)—refusing to register a person as an employer	applicant for registration
3	section 37 (1) (b)—refusing to allow employer additional time for giving return to authority	employer
4	section 37AC (3)—refusing to remit all or part of amount to employer	employer
5	section 38 (1) (b)—refusing to allow registered contractor additional time for giving return to authority	registered contractor
6	section 42 (4)—refusing to credit period of service	employee

[1.26] Dictionary, note 2, new dot points

insert

- quarter
- State

[1.27] Dictionary, definition of *award holiday*

omit

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

substitute

building and construction industry—see section 5.

building and construction work—see section 5A.

contractor—see section 7.

corresponding law means a law of a State declared under section 62 to be a corresponding law.

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

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.

determination, under the *Workplace Relations Act 1996* (Cwlth), includes a variation, suspension, interpretation or cancellation of a determination.

employee—see section 7.

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

omit

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

substitute

employer—see section 6.

employers register—see section 26.

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

omit

[1.32] Dictionary, definition of *ordinary remuneration*

substitute

ordinary remuneration means—

- (a) for an employee (other than a working director)—the amount paid or payable to the employee for building and construction work, other than any amounts for—
 - (i) overtime; or
 - (ii) travelling costs; or
 - (iii) an additional payment for recreation leave; and
- (b) for a contractor or working director—the greater of the following amounts:
 - (i) the amount paid or payable to the person for building and construction work, other than any amounts for expenses incurred, or materials provided, by the person;
 - (ii) the minimum salary or wages payable to the person under an award for building and construction work.

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

omit

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

substitute

reciprocal agreement—see section 64.

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

- (a) a period of service with which a registered worker has been credited in the workers register; or
- (b) a period comprising—
 - (i) a period of service mentioned in paragraph (a); and
 - (ii) a period of service with which the registered worker has been credited under a corresponding law.

[1.35] Dictionary, definition of *registrar*

substitute

registrar means the chief executive officer of the authority within the meaning of the *Financial Management Act 1999*, dictionary, definition of *chief executive officer*.

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

insert

registration day, in relation to a worker—see section 36 (3).

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

omit

in respect of

substitute

for

[1.41] Section 17 heading

substitute

17 Powers in relation to employers' premises

[1.42] Section 19 (1)

omit

section 17 (2) (b) (Powers in relation to premises)

substitute

section 17 (2) (b) (Powers in relation to employers' premises)

[1.43] Section 25 heading

substitute

3-yearly investigation by actuary

[1.44] Section 25 (3)

omit

rates of periodic payments payable to the authority by employers

insert

rates of levies payable to the authority by employers or contractors

[1.45] Section 29

substitute

29 Employers register

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

[1.46] Section 31 (1) (b)

omit

section 39A (Levy payments)

substitute

section 39B (Determination of levy—employers)

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

substitute

- (2) The registrar must—
- (a) register the person as an employer if satisfied the person is an employer; or
 - (b) refuse to register the person as an employer if not satisfied the person is an employer.

[1.48] Part 5 heading

substitute

Part 5 Quarterly returns and payments

[1.49] Section 39B

substitute

39B Determination of levy—employers

- (1) The Minister may determine the levy payable by employers 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.
- (3) Before making a determination, the Minister must have regard to the 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.

[1.50] Section 41

substitute

41 Exemption from levy payments—working directors

- (1) The authority must, on application by a working director, grant the working director's employer an exemption from payment of an amount payable under section 39B (Determination of levy—employers) for cleaning work carried out by the working director.

Note If a form is approved under s 64A for an application, the form must be used.

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

[1.51] Parts 6 and 7

substitute

Part 6 Entries in workers register

43 Particulars to be entered in workers register

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

- (a) the number of days service with which the worker is credited under this Act;
- (b) if the worker is an employee—the employers to whom the service relates;
- (c) the total ordinary remuneration of the worker for cleaning work carried out by the worker;
- (d) the worker's entitlement to long service leave;
- (e) 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*;
- (f) if the worker has stopped working in the contract cleaning industry—the date when the worker stopped working in the industry;
- (g) any other relevant particulars the governing board reasonably directs.

44 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 39 (Quarterly returns by employers) or section 41A (Quarterly returns by contractors) for a quarter is insufficient or excessive because of the nature of the cleaning 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 39—the employer who submitted the return and the employee;
 - (b) for a return under section 41A—the contractor.
- (3) A person mentioned in subsection (2) (a) or (b) may, not later than 1 month after being given the notice, by written statement to the governing board, ask the board to—
 - (a) take into account any matter set out in the statement; and
 - (b) arrange for the person to appear before the 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 statement and 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.

44A Notice of governing board's decision on review of ordinary remuneration

- (1) The governing board must, not later than 7 days after it makes a decision under section 44 (5), give written notice of the decision to—
 - (a) if the decision relates to a return under section 39—the employer who submitted the return and the employee; or
 - (b) if the decision relates to a return under section 41A—the contractor.
- (2) If the decision is to fix another amount under section 44 (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 44B and section 44C (Variation of ordinary remuneration—payment of additional amount of levy).

Note The notice must also comply with the *Administrative Appeals Tribunal Act 1989*, section 25B (1) (see s 59A (3)).

44B Effect of variation of ordinary remuneration

- (1) This section applies if the governing board fixes an amount under section 44 (5) (b) (the *varied amount*) in relation to a worker.
- (2) The varied amount is taken, for this Act, to be the worker's total ordinary remuneration for cleaning work by the worker for the quarter.

- (3) The following provisions apply if the varied amount relates to a return under section 39 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 to the authority the additional amount payable under section 39B (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 amount of the levy payable under section 39B—refund the amount; or
 - (ii) in any other case—credit the amount against future amounts payable under section 39B by the employer.
- (4) The following provisions apply if the varied amount relates to a return under section 41A 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 to the authority the additional amount payable under section 41C (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 amount of the levy payable under section 41C—refund the amount; or
 - (ii) in any other case—credit the amount against future amounts payable under section 41C by the contractor.

44C Variation of ordinary remuneration—payment of additional amount of levy

- (1) A person who must pay an amount under section 44B (3) (a) or (4) (a) must pay the amount to the authority not later than—
 - (a) 1 month after the day the person receives notice under section 44A of the governing board’s decision; or
 - (b) the end of any additional time the registrar allows.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) The registrar may allow additional time for subsection (1) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).

45 Service credit—registered worker’s service

- (1) A registered worker is to be credited in the workers register with 1 day’s service for each day (including a day when the worker does not carry out 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 1 See s 38A and s 38B for crediting of service prior to the worker’s registration day.

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

46 Removing registration from workers register

- (1) The registrar must remove a person's registration 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) The governing board must direct the registrar to remove a person's registration from the workers register if—
 - (a) the person is someone for whom a direction (a *section 37D direction*) was given under section 37D (Governing board may direct registration of employee); and
 - (b) the governing board is satisfied that the person was not an employee for the purposes of the section 37D direction.
- (3) If a person's registration is removed under subsection (1) or (2)—
 - (a) the person stops being a registered worker on the day the registration is removed; and
 - (b) the person is not entitled to apply for, or 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's registration ended.
- (4) However, a person to whom subsection (3) (b) applies is entitled to be paid an amount instead of long service leave for the days of service entered in the register before the person's registration ended if the person would have been entitled to the payment under section 54 (Entitlement to payment instead of leave) if the registration had not ended.
- (5) The governing board must direct the registrar to re-register a person in the workers register if—
 - (a) the person's registration has been removed from the register under subsection (1); and

- (b) the 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 on which the person's registration was removed from the register.
- (6) If a person is re-registered under subsection (5), this Act applies in relation to the person as if the person's registration had not been removed from the register.
- (7) This section does not affect any right that a person whose registration has been removed from the workers register may have to again become a registered worker.

Part 7 Annual certificates

47 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 service credited to the worker in the worker's register as at the end of the previous financial year; and
- (b) the number of days service credited to the worker in the workers register for the previous financial year; and
- (c) the worker's total ordinary remuneration during the previous financial year for cleaning work; and
- (d) if the worker is an employee—the name of each employer for the worker's recognised service.

48 Annual certificates for employers

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

- (a) the name of each registered employee of the employer recorded in the workers register; and
- (b) for each registered employee of the employer—
 - (i) the number of days service credited to the employee in the worker's register as at the end of the previous financial year; and
 - (ii) the number of days service credited to the employee in the workers register for the previous financial year; and
- (c) the total of all amounts paid by the employer under section 39B (Determination of levy—employers) for the previous financial year.

49 Objection to matter stated in annual certificate

- (1) A worker or employer who is given a certificate under section 47 or section 48 may, not later than 6 months after being given the certificate, object in writing to the governing board about the accuracy of a matter stated in the certificate.
- (2) If an objection is given to the governing board, the governing board must decide the objection and must, if it allows the objection, direct the registrar to—
 - (a) make any necessary correction in the workers register; and
 - (b) give an amended certificate to the person who made the objection.

[1.52] Section 51 (1)

substitute

- (1) The following formula is the *long service leave formula*:

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

[1.53] Section 52

substitute

52 Amount of leave

- (1) A registered worker who has 10 years or more recognised service is entitled to the number of weeks long service leave worked out in accordance with the long service leave formula.
- (2) A registered worker is entitled to long service leave for additional days of service worked out in accordance with the long service leave formula if the worker—
- (a) becomes entitled to long service leave under this Act; and
 - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.

[1.54] Sections 55 and 56

substitute

55 Payment for leave

- (1) A registered employee who has been granted long service leave under section 53, or a registered contractor 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 64A 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 57 (How are leave payments worked out?).
- (3) The authority must pay an applicant any amount payable under subsection (2) at least 7 days before the applicant becomes entitled to the long service leave if—
 - (a) the application is made at least 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.

56 Payment instead of leave

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

Note If a form is approved under s 64A for an application, the form must be used.

- (2) An application by a registered employee 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 57 (How are leave payments worked out?).

[1.55] Section 59

substitute

59 Public holidays etc not to count as leave

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

determination includes a variation, suspension, interpretation or cancellation of a determination.

industry holiday means a day that is a holiday for people employed in the contract cleaning industry under an award, or a determination or industrial agreement, under the *Workplace Relations Act 1996* (Cwlth).

[1.56] Sections 60 to 63

substitute

60 Decisions reviewable by AAT

- (1) A person mentioned in schedule 1, table 1.1, column 3 may apply to the administrative appeals tribunal for review of a decision by the governing board mentioned in column 2 for the person.
- (2) A person mentioned in schedule 1, table 1.2, column 3 may apply to the administrative appeals tribunal for review of a decision by the registrar mentioned in column 2 for the person.

61 Notice of reviewable decisions

- (1) The governing board must give written notice of a decision mentioned in schedule 1, table 1.1, column 2 to the affected person mentioned in column 3 for the decision.
- (2) The registrar must give written notice of a decision mentioned in schedule 1, table 1.2, column 2 to the affected person mentioned in column 3 for the decision.
- (3) A notice under subsection (1) or (2) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

62 Evidentiary certificates

- (1) In a proceeding for an offence against section 39 (Quarterly returns by employers) or section 41A (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 39A (Levy payments by employers) or section 41B (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.

63 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.

[1.57] Section 64

substitute

64 Benefits under other laws

- (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 workers register the employee's credits for the service period.
- (4) However, the authority must keep a record of the deleted credits.
- (5) An employer may apply to the authority for reimbursement of an amount paid under the Long Service Leave Act 1976, section 8 (Manner of payment for leave) or under a law prescribed by regulation for a registered employee who has elected to take long service benefits under that Act or the prescribed law for a service period in the contract cleaning industry.
- (6) If an application is made to the authority under subsection (5) and the governing board is satisfied the amount paid by the employer was properly paid in accordance with the *Long Service Leave Act 1976*, section 8 or prescribed law, the authority must pay the employer the amount applied for less any amount outstanding that is payable by the employer to the authority.

[1.58] Section 64A (1)

omit

, in writing,

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

insert

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

[1.60] Schedule 1

substitute

Schedule 1 Decisions reviewable by AAT

(see s 60)

Table 1.1 Governing board—decisions reviewable by AAT

column 1 item	column 2 decision	column 3 affected person
1	section 37 (3) (b)—directing the registrar to refuse to register applicant as worker	applicant
2	section 37C (3) (a)—confirming registrar’s decision to refuse to register applicant as worker	applicant
3	section 37D (2)—directing the registrar to register person as worker	person
4	section 38A (2)— <ul style="list-style-type: none"> • refusing to credit employee with prior service • amount of prior service credited 	employee
5	section 38B (b)— <ul style="list-style-type: none"> • refusing to credit contractor with prior service • amount of prior service credited 	contractor
6	section 40A (2)—refusing to exempt employer from levy	employer
7	section 44 (5) (b)—fixing 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

column 1 item	column 2 decision	column 3 affected person
8	section 46 (5) (b)—refusing to direct registrar to re-register person	person
9	section 49 (2)—allowing, or refusing to allow, objection to matter in certificate given to worker under section 47	<ul style="list-style-type: none"> • worker • if the worker is an employee—the worker’s employer
10	section 49 (2)—allowing, or refusing to allow, objection to matter in certificate given to employer under section 48	<ul style="list-style-type: none"> • employer • employee to whom objection relates
11	section 53—refusing to allow additional period	applicant
12	section 54 (3)—not satisfied that section applies to applicant	applicant
13	section 55 (2)—not satisfied that applicant entitled to long service leave	applicant
14	section 56 (6)—not satisfied that applicant entitled to payment instead of long service leave	applicant
15	section 64 (6)—not satisfied that amount paid by employer was properly paid	employer

Table 1.2 Registrar—decisions reviewable by AAT

column 1 item	column 2 decision	column 3 affected person
1	section 30 (1) (b)—refusing to allow additional time for application for registration by employer	employer
2	section 32 (3)—refusing to register a person as an employer	applicant for registration
3	section 39 (1) (b)—refusing to allow employer additional time for giving return to authority	employer

column 1 item	column 2 decision	column 3 affected person
4	section 40 (3)—refusing to remit all or part of amount to employer	employer
5	section 41A (1) (b)—refusing to allow registered contractor additional time for giving return to authority	registered contractor

[1.61] Dictionary, note 2, new dot points

insert

- entity
- quarter

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

omit

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

omit

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

insert

contract cleaning industry—see section 3.

[1.65] Dictionary, definition of *determination*

omit

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

substitute

employee—see section 3C.

employer—see section 3B.

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

insert

employers register—see section 29.

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

substitute

long service leave formula—see section 51.

[1.69] Dictionary, definition of *recognised service*

substitute

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

[1.70] Dictionary, definition of *registered employer*

substitute

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

[1.71] Dictionary, definition of *registrar*

substitute

registrar means the chief executive officer of the authority within the meaning of the *Financial Management Act 1999*, dictionary, definition of *chief executive officer*.

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

omit

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

insert

service means service in the contract cleaning industry.

workers register—see section 36.

[1.74] Further amendments, references to *employee*

omit

employee

substitute

worker

in

- section 50
- section 59

**[1.75] Long Service Leave (Contract Cleaning Industry) Act
1999—renumbering**

*renumber provisions when Act next republished under Legislation
Act*

Schedule 2 **Criminal Code harmonisation**

(see s 3 and s 22)

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

[2.1] Section 4, note 1

substitute

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*).

[2.2] Section 39

substitute

39 Employers to keep records

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

Maximum penalty: 20 penalty units.

- (2) An employer must keep a written record mentioned in subsection (1) for 6 years after the day the employee stops service in the building and construction industry with 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 building and construction 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 the building and construction industry 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 of ceasing service.

[2.3] Section 52

substitute

52 Grant of leave by employers

- (1) The employer of a registered employee commits an offence if—
- (a) the employee's long service leave accrues; and

- (b) the employer does not grant the employee the long service leave before the end of the 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 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) at least 2 months before the day when the long service leave starts; or
 - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

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

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

- (a) 6 months after the day the leave accrues; or
- (b) if 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.

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

[2.4] New section 2B

insert

2B 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.

[2.5] Section 30

substitute

30 Application for registration by employers

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

Maximum penalty: 50 penalty units.

Note If a form is approved under s 64A 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) (b) before or after the end of the 1-month period mentioned in subsection (1) (a).

[2.6] Section 31 (2)

substitute

- (2) A person commits an offence if—
 - (a) a court makes an order against the person under subsection (1) (a); and
 - (b) the person does not comply with the order.

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

[2.7] Section 39A

substitute

39A Levy payments by employers

- (1) A person who is an employer during a quarter must, when the person gives the authority a return under section 39, pay to the authority the amount of the levy payable under section 39B for the quarter.

Maximum penalty: 20 penalty units.

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

[2.8] Section 42

substitute

42 Employers to keep records

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

Maximum penalty: 20 penalty units.

- (2) An employer must keep a written record mentioned in subsection (1) for 6 years after the day the record was made.

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 cleaning work carried out by the employee for the employer; and
- (c) the employee's ordinary remuneration paid or payable by the employer for each quarter; and
- (d) the number of days worked by the employee for the employer in the cleaning industry 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, by the employer; and

- (g) if the employee stops service with the employer—the date of ceasing service.

[2.9] Section 53

substitute

53 Grant of leave by employers

- (1) The employer of a registered employee commits an offence if—
- (a) the employee’s long service leave accrues; and
 - (b) the employer does not grant the employee the long service leave before the end of the 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 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) at least 2 months before the day when the long service leave starts; or
 - (ii) if the employer and employee agree on a shorter period—before the start of the period agreed.

Maximum penalty: 50 penalty units.

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

(5) In this section:

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

- (a) 6 months after the day the leave accrues; or
- (b) if 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.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 May 2007.

2 Notification

Notified under the Legislation Act on 19 June 2007.

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 (Building and Construction and Contract Cleaning Industries) Legislation Amendment Bill 2007, which was passed by the Legislative Assembly on 7 June 2007.

Clerk of the Legislative Assembly

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