



BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

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Queensland



Building and Construction Industry (Portable Long Service Leave) Act 1991

Act No. 90 of 1991

**An Act to provide for an equitable and efficient system of portability
of long service leave in the building and construction industry**

[Assented to 11 December 1991]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Interpretation

3. In this Act—

“approved form” means a form that is approved by the Board;

“authorised officer” means a person authorised under section 85(1);

“award” means—

(a) an award or industrial agreement within the meaning of the *Industrial Relations Act 1990*; or

(b) an award within the meaning of the *Industrial Relations Act 1988* of the Commonwealth;

“Board” means the Building and Construction Industry (Portable Long Service Leave) Board;

“building and construction industry” means the industry of—

(a) carrying out the construction, reconstruction, renovation, alteration, demolition or maintenance of or repairs of or to—

(i) buildings; or

(ii) roads, railways, airfields or other works for the passage of anything; or

- (iii) breakwaters, docks, jetties, piers or wharves; or
 - (iv) works for the improvement or alteration of any harbour, river or watercourse for the purposes of navigation; or
 - (v) works for the storage or supply of water; or
 - (vi) works for the irrigation of land; or
 - (vii) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises; or
 - (viii) works for extracting, refining, processing or treating materials or for producing or extracting products and byproducts from materials; or
 - (ix) works for the drainage of land; or
 - (x) works for the storage of liquids (other than water) or gases; or
 - (xi) works for the generation, supply or transmission of electric power; or
 - (xii) works for telecommunication or transmission of radio or television; or
 - (xiii) bridges, viaducts, aqueducts or tunnels; or
 - (xiv) chimney stacks, cooling towers, drilling rigs, gas holders or silos; or
 - (xv) pipe lines; or
 - (xvi) navigational lights, beacons or markers; or
 - (xvii) pile driving works; or
 - (xviii) fences (other than fences on what, in the opinion of the Board, are farms); or
 - (xix) facilities that, in the opinion of the Board, are sporting or recreational facilities; or
- (b) carrying on any of the following activities—
- (i) preparing a site for carrying out on the site anything mentioned in paragraph (a); or

(ii) work involving structures, fixtures or other works for use on, in or in connection with anything mentioned in paragraph (a); or

(iii) carrying out any work that may be carried out on site, but which may also be carried out elsewhere, in respect of anything mentioned in paragraph (a);

but does not include the performance of maintenance or repairs that are of a routine or minor nature by persons for an employer that is not substantially engaged in anything mentioned in paragraph (a);

“building and construction work” means any work performed in the building and construction industry;

“contract of employment” includes any apprenticeship or traineeship in the building and construction industry;

“corresponding authority” means the authority that is responsible for the day to day administration of a corresponding law;

“corresponding law” means a law declared under section 81(1) to be a corresponding law for the purposes of this Act;

“employee” means a person who, in the opinion of the Board, for the majority of the person’s ordinary hours of work, performs, or usually performs, work under a contract of employment for which a rate of pay is fixed by an award prescribed by the regulations, but does not include—

(a) a person who is of a class of person which class is prescribed by the regulations to be a class of person that is exempt from the operation of this Act; or

(b) a person who performs or supervises the performance of building and construction work under a contract of employment with—

(i) a Local Authority; or

(ii) any other body constituted by an Act or by an Act of the Commonwealth;

“levy” means long service leave levy;

“Local Authority” means a body responsible for local government in any part of the State;

“long service leave levy” means levy that is imposed under Part 7, and includes an additional amount of levy under section 70 and any interest under section 74;

“long service leave payment” means payment that is required to be made under Part 6;

“Manager” means the manager of the Board;

“public sector employee” means a public sector employee within the meaning of the *Public Sector Management Commission Act 1990*;

“register of employees” means the register of employees kept by the Board under Part 5;

“register of employers” means the register of employers kept by the Board under Part 5;

“registered employee” means an employee whose name is in the register of employees;

“registered employer” means an employer whose name is in the register of employers;

“year’s service” means a year’s service within the meaning of section 45.

Act binds Crown

4.(1) This Act binds the Crown.

(2) The Crown is not liable to prosecution for an offence against this Act.

**PART 2—BUILDING AND CONSTRUCTION
INDUSTRY (PORTABLE LONG SERVICE LEAVE)
BOARD**

Establishment of Board etc.

5.(1) A board called the Building and Construction Industry (Portable Long Service Leave) Board is established.

(2) The Board is a body corporate with perpetual succession and a common seal and, subject to this Act, is capable in law of—

- (a) suing and being sued; and
- (b) compounding or proving in a court of competent jurisdiction all debts and amounts due to it; and
- (c) acquiring, holding, demising, letting and alienating property; and
- (d) doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(3) The Board represents the Crown in right of the State and is entitled to the rights, privileges and immunities of the Crown.

Functions of Board

6. The Board—

- (a) is to monitor the conduct of the business of the Board by the Manager; and
- (b) is to encourage the prosperity of the building and construction industry in Queensland; and
- (c) is to carry out investigations and provide advice concerning such matters in this Act as the Minister may request; and
- (d) may make recommendations to the Minister with respect to—
 - (i) the administration of this Act; and
 - (ii) the provisions of this Act; and
 - (iii) long service leave levy; and
 - (iv) long service leave payments.

Composition of Board

7. The Board is to consist of 8 members appointed by the Governor in Council by Industrial Gazette notice, as follows—

- (a) one person to be both a member and the chairperson; and
- (b) one person who has knowledge of and experience in financial affairs, to be both a member and the deputy chairperson; and
- (c) 3 persons representing employers in the building and construction industry; and
- (d) 3 persons representing employees who perform building and construction work.

Deputies of members

8.(1) The Governor in Council may at any time appoint a person who is not a member of the Board to be a deputy of a member of the Board.

(2) A person appointed as deputy of a member of the Board is entitled to attend meetings of the Board in the absence of the member, and while attending, has the functions and powers of that member.

Disqualification from Board membership

9.(1) A person who—

- (a) is a patient within the meaning of the *Mental Health Services Act 1974*; or
- (b) is an undischarged bankrupt or takes advantage of the laws relating to bankruptcy; or
- (c) subject to subsection (2), has been convicted in the State of an indictable offence or outside the State in respect of an act or omission such that had it happened in the State it would have constituted an indictable offence;

is disqualified from being, or continuing as, a member of the Board.

(2) Subsection (1)(c) does not apply to a person if the Minister certifies in writing that, in the Minister's opinion, the circumstances of the act or

omission mentioned in that subsection do not warrant the member's being disqualified from being, or continuing as, a member of the Board.

Term of office

10.(1) A member of the Board holds office for a term of 3 years and, subject to this Act, is eligible for reappointment.

(2) The Governor in Council may, at any time, remove from office a member of the Board by Industrial Gazette notice.

Vacating office

11.(1) The office of a member of the Board becomes vacant if the member—

- (a) dies; or
- (b) resigns by signed notice given to the Minister; or
- (c) is absent, without prior leave of the Board and without reasonable excuse, from 3 consecutive meetings of the Board of which notice has been given to the member; or
- (d) becomes disqualified as prescribed by section 9 from continuing as a member; or
- (e) is removed from office under section 10(2).

(2) A member of the Board is not taken to have been absent from a meeting of the Board because of a failure to attend at the time and place notified to the member for the meeting unless—

- (a) a meeting of the Board is actually held at that time and place; or
- (b) at a later hour on the same day and the member has been given notice of the later hour.

Casual vacancy

12.(1) When a vacancy happens in the office of a member of the Board before the end of the term of appointment, the Governor in Council may appoint another person to the office for the balance of the term.

(2) A person appointed in place of a member mentioned in section 7(b), (c) or (d) must have the knowledge and experience required by section 7(b) or be representative as required by section 7(c) or (d), as the case may be.

(3) If the member in whose office a vacancy happens was also chairperson or deputy chairperson of the Board, the successor appointed under subsection (1) is also chairperson or deputy chairperson of the Board, as the case may be.

Board meetings

13.(1) Subject to subsection (2), the Board is to meet as often as is necessary for the discharge of its functions and the exercise of its powers under this Act.

(2) The Board is to meet at least once in every 3 months.

(3) The chairperson may convene a meeting of the Board at any time.

(4) The chairperson must convene a meeting if jointly requested by a member of the Board appointed under section 7(c) and a member of the Board appointed under section 7(d).

Procedure at meetings etc.

14.(1) The chairperson of the Board is to preside at all meetings at which the chairperson is present and, in the chairperson's absence, the deputy chairperson of the Board is to preside.

(2) When the deputy chairperson presides at a meeting, the deputy chairperson has all the functions and powers of the chairperson.

(3) A quorum of the Board consists of 5 members, of whom—

(a) one is to be the chairperson or deputy chairperson of the Board;
and

(b) one is to be a member appointed under section 7(c); and

(c) one is to be a member appointed under section 7(d).

(4) Business is not to be conducted at a meeting of the Board unless a quorum is present.

(5) Business at a meeting is decided by majority vote of the members present and voting on the business in question.

(6) Business of the Board decided by written reference to the members of the Board is to be decided by majority vote of the members voting on the business in question in response to the reference.

(7) A member of the Board who refrains from voting is taken to have cast a vote in the negative unless the member refrains because of a conflict of interest declared by the member.

(8) The person who presides at a meeting, or, if business of the Board is decided by a written reference, the chairperson, has a deliberative vote and a casting vote.

(9) Subject to this Act, the Board may conduct its business generally, and proceedings at its meetings, in such way as it determines from time to time.

(10) The Board in respect of any matter being considered by it must have regard to anything placed before it, and any comments, by the Manager.

Minutes

15.(1) The chairperson of the Board must cause a record to be kept of every decision of the Board, whether made at a meeting or by written reference to the members.

(2) The record of each decision of the Board must be presented to the Board's next meeting for confirmation.

(3) If the record is confirmed, it must be signed by the person presiding at the meeting and forms part of the minutes of the meeting.

Custody and affixing of seal

16.(1) The Board's common seal is to be kept in the Manager's custody.

(2) The common seal can be lawfully affixed to a document by the Manager only in pursuance of a resolution of the Board.

(3) The Manager must affix the common seal in the presence of the chairperson or, in the absence of the chairperson, the deputy chairperson.

(4) Judicial notice is to be taken of the imprint of the Board's common seal affixed to any document and, until the contrary is proved, it is to be presumed that the seal has been duly affixed to the document.

Execution of contracts and agreements

17. Contracts or agreements may be made, varied or discharged on behalf of the Board in the following way—

(a) a contract or agreement that, if made between individuals would be required by law to be in writing under seal, may be made, varied or discharged in the name and on behalf of the Board, in writing under the common seal of the Board;

(b) a contract or agreement that, if made between individuals would be required by law to be in writing signed by the parties and not required to be under seal, may be made, varied or discharged in the name and on behalf of the Board, in writing signed by any person acting under the express or implied authority of the Board;

(c) a contract or agreement that, if made between individuals would by law be valid although made verbally only and not reduced to writing, may be made, varied or discharged verbally in the name and on behalf of the Board, by any person acting under the express or implied authority of the Board.

Authentication of documents

18. Subject to sections 16 and 17, a document made or issued by the Board for the purposes of this Act is sufficiently authenticated if it is made or signed by the chairperson or, in the absence of the chairperson, by the deputy chairperson.

Validity of actions

19. Any action, proceeding, decision, determination, direction or notice of or by the Board is not invalid or unlawful merely because of a defect in the qualification, membership or appointment of a member of the Board.

Remuneration of members

20.(1) A member of the Board is to be paid such fees, remuneration and allowances in respect of the discharge of duties as a member as are determined by the Governor in Council.

(2) A provision in an Act requiring the holder of a specified office to devote the whole of the holder's time to the duties of office, or prohibiting engagement in employment outside the duties of office, does not operate to disqualify the holder from—

- (a) holding that office and also the office of member of the Board; or
- (b) accepting and retaining any fees, remuneration or allowances payable under this section.

PART 3—ADMINISTRATION**Administration subject to Minister**

21. Subject to the Minister, the Board is to administer this Act.

Appointment of officers to administer Act

22.(1) The Manager of the Board is to be appointed under the *Public Service Management and Employment Act 1988*.

(2) Members of the staff of the Board are to be appointed under the *Public Service Management and Employment Act 1988*.

(3) A public sector employee may, in addition to the position the employee holds in the public sector, be appointed to and hold office for the purposes of this Act.

Functions of Manager

23.(1) Subject to the Board's direction, the Manager is to conduct the business of the Board.

(2) Subject to any direction of the Board, the Manager has all the Board's powers.

(3) Without limiting subsection (2), if the Board is required or authorised—

(a) to do anything; or

(b) to be of a prescribed opinion, belief or state of mind in relation to a matter;

it is sufficient compliance with this Act, subject to any direction of the Board to the contrary, if the Manager does the thing, or is of the prescribed opinion, belief or state of mind, on the Board's behalf.

Manager's power of delegation

24. The Manager may delegate all or any of the Manager's powers to a member of the Board's staff.

Judicial notice of signatures

25. Judicial notice is to be taken of the signature of the chairperson, deputy chairperson or Manager on a document and, until the contrary is proved, the signature is presumed to have been duly made.

Use of services of public sector employees

26.(1) With the approval of the Minister, and of the Minister responsible for the department concerned, the Board may utilise the services of any public sector employee on such terms as are arranged.

(2) The amount of salaries, wages or allowances paid from the public accounts to a public sector employee who is engaged in the business of the Board under subsection (1) must be recouped to the public accounts to the extent that reflects the proportion of the working time of the public sector employee spent in the business of the Board.

PART 4—FINANCIAL PROVISIONS

Funds of Board

27.(1) The funds of the Board consist of—

- (a) long service leave levy paid to the Board; and
- (b) amounts borrowed by the Board; and
- (c) the proceeds from investments by the Board; and
- (d) any other amounts received by the Board.

(2) Funds of the Board are to be applied to making—

- (a) long service leave payments; and
- (b) payments in respect of expenses incurred in the administration of this Act; and
- (c) payments in respect of borrowings by the Board; and
- (d) investments by the Board; and
- (e) any other payments authorised by this Act.

Proposed budget and progress budget reports

28.(1) The Board must provide the Minister with details of its proposed budget for each financial year at least 30 days before the start of the financial year.

(2) The proposed budget has no effect unless it is approved by the Minister.

(3) The Board must provide to the Minister progress reports on the operation of the budget.

(4) Progress reports are to be provided at such times, and in the way, that the Minister requires.

Actuarial investigation of funds

29.(1) The Board must cause investigations, in respect of the sufficiency of the Board's funds and the adequacy of the rate of long service leave levy to be made—

(a) as at a date not later than 18 months after commencement of Part 7; and

(b) as at a date not later than 3 years after that commencement.

(2) The Board must cause such investigations to be made as at such other dates as, subject to subsection (3), the Board determines.

(3) The interval between the dates as at which investigations are made must not be longer than 3 years.

(4) An investigation under subsection (1) or (2) must be made by an actuary.

(5) An actuary who makes an investigation under subsection (1) or (2)—

(a) must complete the investigation, and report the result of the investigation to the Board, as soon as practicable after the date as at which the investigation is made; and

(b) must express in the report an opinion whether or not any reduction or increase should be made in the rate of long service leave levy.

(6) The Board must, as soon as practicable after it receives a report under subsection (5), forward the report to the Minister together with its recommendations on—

(a) the opinion expressed by the actuary under subsection (5)(b); and

(b) whether the funds available are sufficient to carry out the Board's functions.

PART 5—REGISTRATION AND SERVICE CREDITS

Division 1—Register of employees

Board to keep register of employees

30.(1) The Board must keep a register of persons who are employees in the building and construction industry.

(2) The register must contain—

(a) the names of all persons whose applications have been approved under section 32; and

(b) the date on which each such person became a registered employee; and

(c) in respect of each such person, the number of days' service in the building and construction industry with which the person is credited under Division 3; and

(d) such other information as the Board considers necessary for the purpose of administering this Act.

(3) The Board may, for the purposes of entering in the register of employees the particulars referred to in subsection (2)(c), rely on the information contained in a certificate of service furnished under section 41 or on such other information as the Board thinks fit.

Application for registration

31.(1) A person may, at any time, apply in writing to become a registered employee.

(2) The application must be in the approved form.

Approval or refusal of application for registration

32. The Board must consider each application made under section 31 and must—

- (a) if satisfied that the applicant is an employee in the building and construction industry—approve the application; or
- (b) if not so satisfied—refuse the application.

Date of registration

33.(1) For the purposes of section 30(2)(b), the date on which an applicant becomes a registered employee is—

- (a) the date on which the application was lodged with the Board; or
- (b) if the Board fixes an earlier date under subsection (2)—that date.

(2) The Board may, for the purposes of subsection (1), in respect of the applicant and at the request of the applicant, fix an earlier date than the date on which the applicant made application under section 31.

(3) The Board must not, at the request of an applicant, fix a date earlier than 2 years before the request to fix that earlier date is made unless it considers that there are special circumstances with regard to the applicant that warrant its doing so.

Cancellation of registration

34.(1) The Board may cancel the registration of a registered employee if it is satisfied that the registered employee has not been credited with any service in the register of employees kept under this Act, or in a like register or record kept under a corresponding law, for at least 4 consecutive years.

(2) The Board may cancel the registration of a person as a registered employee if it is satisfied that the person is not an employee or that the person's application to become a registered employee should have been refused.

(3) If the Board cancels the registration of a person as a registered employee, it must remove the name of the person from the register of employees—

(a) as soon as practicable after 120 days from when the Board notifies the person of the cancellation; or

(b) if an application for a reconsideration or an appeal under Part 8 is lodged against the cancellation within that period—on the day the application or appeal is withdrawn or the cancellation is finally confirmed.

(4) When the name of a person is removed from the register of employees—

(a) the person ceases to be a registered employee; and

(b) the person or the personal representative of the person is not entitled to apply for or be paid long service leave in respect of any days' service credited to the person in the register of employees at the time of the removal.

(5) Nothing in this section prevents a person whose name has been removed from the register of employees under this section from subsequently becoming a registered employee.

Division 2—Register of employers

Board to keep register of employers

35. The Board must keep a register of employers that are employers in the building and construction industry.

Application for registration

36.(1) An employer in the building and construction industry (whether or not the employer carries on any other business) that employs employees must register as an employer under this Division.

Maximum penalty—

(a) if the employer is an individual—16 penalty units; and

(b) if the employer is a body corporate—32 penalty units.

(2) An employer that is required to register as an employer under this Division must apply in writing to the Board for registration in the approved form.

Employer's name and address

37.(1) An application under section 36 by an employer must contain every name under which the employer is engaged in the building and construction industry and every business address of the employer.

(2) If an employer ceases to operate under any name or at any address notified in an application, the employer must notify the Board of that fact.

Maximum penalty—

- (a) if the employer is an individual—16 penalty units; and
- (b) if the employer is a body corporate—32 penalty units.

Other information

38.(1) An application under section 36 must contain such information as is required by the approved form.

(2) The Board may require an applicant to supply such further information as it specifies to satisfy the Board that the applicant is an employer in the building and construction industry and may require any information to be verified by statutory declaration.

Approval or refusal of application for registration

39.(1) On receiving an application under section 36, the Board must, if it is satisfied with the information in the application, register the applicant as an employer.

(2) If the Board is not satisfied with any information given in an application, the Board may return the application and refuse to register the applicant as an employer.

Cancellation of registration

40. A registered employer that no longer employs employees may cancel the employer's registration under section 39 by giving written notice to the Board that the employer no longer employs employees.

Division 3—Service credits**Certificate of service to be supplied by employers**

41.(1) An employer in the building and construction industry that employs an employee must—

- (a) give to the Board and the employee, in accordance with the regulations, a certificate of service for the employee; and
- (b) within such reasonable time, and in such reasonable way, as is specified in a notice served on the employer by the Board, give to the Board and the employee a certificate of service for the employee for the period specified in the notice.

Maximum penalty—

- (a) if the employer is an individual—16 penalty units; and
- (b) if the employer is a body corporate—32 penalty units.

(2) The Board may extend (for no longer than 2 months) the time specified in a notice served under subsection (1).

Form and contents of certificate

42.(1) A certificate of service under section 41 must—

- (a) be in the approved form; and
- (b) state whether the employee was employed by the employer for the whole of the period to which the certificate relates or, if employed for only a part of the period, the period during which the employee was employed; and
- (c) state whether the employee was employed in the performance of building and construction work on a full-time basis or, if not, state

such particulars as are requested in the form in respect of the time spent by the employee in the performance of building and construction work; and

(d) contain such particulars of building and construction work performed by the employee outside Queensland as are requested in the form; and

(e) contain such other particulars as are requested in the form; and

(f) be completed in accordance with the directions contained in the form; and

(g) be signed by the employer giving the certificate or by some person authorised by the employer to sign the certificate.

(2) The certificate of service must be verified in any way (including by statutory declaration) that the Board requires.

Exemptions

43. An employer is not required to furnish a certificate of service for an employee or class of employees if—

(a) the employer applies to the Board for an exemption from the requirement because the employer no longer employs the employee or class of employees; and

(b) the employer satisfies the Board that the employer complies with the provisions of, or makes contributions to, a like scheme relating to the payment of long service leave payments in respect of the employee or class of employees in another State or in a Territory; and

(c) the Board has, by written notice to the employer, granted the exemption and has not, by written notice to the employer, revoked the exemption.

Number of days' service

44. Subject to sections 45, 46 and 48, if the Board is satisfied that a registered employee was employed under a contract of employment in the performance of building and construction work, the registered employee must be credited in the register of employees with the following number of days' service—

- (a) if the employment was on a full-time basis only during a financial year—the number of days' service; or
- (b) on a basis that is not a full-time basis during the whole, or a part, of a financial year—such number of days service with which the employee would have been credited, in the Board's opinion, had the employment been on a full-time basis only.

Year's service

45. For the purposes of this Act, an employee is taken to have a year's service for every 220 days' service that is credited to the employee in the register of employees kept under this Act or in a like register or record kept under a corresponding law.

Limitations on service credits

46.(1) Subject to section 48, a person must not be credited in the register of employees with any day's service in the building and construction industry unless that day was on or after the date, shown in the register under section 33(1)(a) or (b), on which the person became a registered employee.

(2) A registered employee must not be credited in the register of employees with more than 220 days' service in the building and construction industry for a financial year.

(3) If—

- (a) in respect of a financial year a registered employee would, but for this subsection, be entitled to be credited in the register of employees with a period of service and to be credited in a like register or record kept under a corresponding law with another period of service; and
- (b) the periods of service together amount to more than 220 days;

the period of service with which the employee is to be credited in the register of employees kept under this Act must be adjusted so as to provide that the total period with which the employee is credited in the registers does not exceed 220 days.

(4) The adjustment referred to in subsection (3) must be made—

(a) when an application is made under this Act or a corresponding law for payment of long service leave to be made in respect of a period of service that includes either or both of the periods of service referred to in that subsection; or

(b) at such other time as the Board may decide.

(5) If payment in respect of long service leave is made to a person because of—

(a) an application made under section 50, by virtue of the person's having fulfilled the requirements specified in section 51(1)(a) or (c); or

(b) an application made under a provision of a corresponding law that corresponds to section 50, by virtue of the person's having fulfilled requirements similar to those specified in section 51(1)(a) or (c);

the person must not be credited in the register of employees with any days' service in respect of building and construction work performed by that person during the period of long service leave.

(6) If payment in respect of long service leave is made to a person because of—

(a) an application made under section 50, by virtue of the person's having fulfilled the requirements specified in section 51(1)(b)(i) or (d)(i); or

(b) an application made under a provision of a corresponding law that corresponds to section 50, by virtue of the person's having fulfilled requirements similar to those specified in section 51(1)(b)(i) or (d)(i);

the person must not be credited in the register of employees with any days' service in respect of building and construction work performed by that person during the period of 12 months immediately following the date of that application.

Notice to registered employees of service credits

47. The Board must, as soon as practicable after 31 July in each year, serve on each person who on 30 June in that year was a registered employee a notice—

- (a) specifying the number of days' service in the building and construction industry, as shown in the register of employees, with which that registered employee has, in accordance with this Division, been credited in respect of the year ended on that 30 June; and
- (b) specifying the total number of days' service in the building and construction industry with which that registered employee has, in accordance with this Division, been credited.

Retrospective service credits

48.(1) A registered employee, or person who applies to become a registered employee, may apply to the Board to be credited with retrospective service credits for the time he or she was employed in performing building and construction work—

- (a) in Queensland; and
- (b) during any part of the 5 years immediately before the commencement of this Part.

(2) A registered employee must not be credited—

- (a) with more than 220 days for any of the years referred to in subsection (1)(b); or
- (b) for more than 5 years; or
- (c) with service credits for a period for which the employee has an entitlement under subsection (3).

(3) If an employee who is entitled to become a registered employee, as at the commencement of this Part, has an entitlement to long service leave under the *Industrial Relations Act 1990* from an employer that is the employer of the employee as at the commencement, the liability for the entitlement remains with the employer.

(4) If—

(a) the Board is satisfied with the information given in an application under subsection (1); and

(b) the applicant is, or becomes, a registered employee;

the Board must credit the applicant, in the register of employees, with retrospective service credits to which the Board considers the applicant to be entitled to be credited.

Application for retrospective service credits

49.(1) An application under section 48(1) must be made—

(a) within—

(i) one year from the commencement of this Part; or

(ii) such longer period as the Board allows under subsection (3);
and

(b) in the approved form.

(2) If an applicant requests the Board to allow a longer period under subsection (1)(a)(ii), the Board may allow a longer period.

(3) The Board—

(a) must not allow a period longer than 2 years after the commencement of this Part; and

(b) may allow a period longer than one year from the commencement of this Part only if it considers that there are special circumstances in a particular case for so doing.

(4) If the Board is not satisfied with any information given in an application, the Board may refuse the application.

PART 6—LONG SERVICE LEAVE

Application for entitlement to long service leave

50.(1) A registered employee who has service credits in the register of employees may apply to the Board in the approved form for the employee's entitlement under section 51(1) for the credits.

(2) The personal representative of a person who died having service credits in the register of employees may apply to the Board in the approved form for payment for the credits to which the person was entitled under section 51(1) immediately before his or her death.

Entitlement to long service leave

51.(1) The entitlement to long service leave is—

(a) if the registered employee has accrued 15 years' or more service credits—13 weeks;

(b) if the registered employee has accrued 10 years' service credits, but less than 15 years' service credits, and—

(i) the employee intends permanently to cease work in the building and construction industry; or

(ii) the employee dies;

a period that bears to 13 weeks the proportion that the employee's service credits (expressed in years, and a fraction of a year where necessary) bears to 15 years;

(c) if the registered employee, having accrued the first or a subsequent 15 years' service credits, continues that service until the completion of a further 15 years' service credits—a further 13 weeks;

(d) if the registered employee, having accrued the first or a subsequent 15 years' service credits, continues that service until the accrual of a further 5 years' service credits, but less than 15 years' service credits, and—

(i) the employee intends permanently to cease work in the building and construction industry; or

(ii) the employee dies;

a further period that bears to 13 weeks the proportion that the employee's service credits (expressed in years, and a fraction of a year where necessary) bears to 15 years.

(2) Long service leave is exclusive of any public holiday that happens during a period of long service leave that is taken.

Employees not to carry out certain building and construction work during leave

52. If an employee takes a period of long service leave mentioned in section 51(1)—

(a) the employer of the employee immediately before the employee starts the leave must not—

(i) offer building and construction work to the employee; or

(ii) allow the employee to perform building and construction work;

for the employer, during the period; and

(b) the employee must not—

(i) request the employer to allow the employee to perform building and construction work; or

(ii) agree to carry out, or carry out, building and construction work;

for the employer, during the period.

Maximum penalty—

(a) if the defendant is an individual—16 penalty units; and

(b) if the defendant is a body corporate—32 penalty units.

Amount of long service leave payment

53.(1) As soon as practicable after an application is made under section 50, the Board must, subject to sections 51 and 54, pay to the applicant long service leave payment calculated in accordance with the following formula—

$$\text{LSLP} = \frac{\text{S}}{220} \times \frac{13}{15} \times \text{P.}$$

(2) In subsection (1)—

“**LSLP**” (long service leave payment) means the amount of long service leave payment;

“**S**” (service) means the number of days’ service with which the registered employee in respect of whom the application is made is credited in the register of employees—

- (i) on the day on which the entitlement to long service leave payment first arose; or
- (ii) if the employee or personal representative so requests—on the day the application is lodged with the Board;

“**P**” (pay) means the amount of ordinary pay in respect of a normal working week that is, in the opinion of the Board, payable to the registered employee on the day the employee starts long service leave.

(3) Long service leave is to be paid for as ordinary time.

(4) For the purpose of making long service leave payment, ordinary time is taken to be worked continuously by the registered employee concerned during the period of the employee’s long service leave.

(5) If, immediately before starting long service leave, a registered employee is being paid for ordinary time worked at a rate higher than the rate payable under the relevant award for ordinary time, the employee’s long service leave is to be paid for at the rate at which the employee is being paid as ordinary time.

(6) For the purpose of making long service leave payment at the higher rate, ordinary time at that rate is, subject to subsection (7), taken to be worked continuously by the employee during the period of long service leave.

(7) If, during the employee's long service leave, the rate payable for ordinary time under the relevant award is—

(a) increased to a rate higher than the rate at which the employee is entitled to be paid—the employee is to be paid at the increased rate for the part of the period of leave during which the increased rate is the rate for ordinary time payable under the relevant award; or

(b) decreased—the employee may be paid at the rate at which the employee is entitled to be paid before the decrease less the whole or any portion of the amount of the decrease, for any part of the period of leave during which that decreased rate is the rate for ordinary time payable under the relevant award.

(8) If the Board is satisfied that—

(a) a registered employee who intends starting a period of long service leave is usually paid a rate greater than the rate for ordinary time payable under the relevant award; and

(b) the registered employer of the employee before the employee starts the leave decreases or increases the rate at which the employee is usually paid;

the Board, in forming the opinion mentioned in the component **P** in subsection (2) must have regard to the circumstances in which the decrease or increase was made.

Long service leave payment not payable in certain cases

54.(1) The Board must not pay to a registered employee mentioned in section 51(1)(b)(i) or 51(1)(d)(i) long service leave payment unless the Board is satisfied that the employee intends permanently to cease work in the building and construction industry.

(2) A registered employee is not entitled to be paid long service leave payment for any day's service credited to the registered employee in the register of employees if long service leave payment or a payment under section 56 has been made for the day.

Election to take benefits under this Act or Industrial Relations Act

55.(1) A registered employee is not entitled to be credited under Division 3 of Part 5 with service for a period of service as an employee in the building and construction industry if the employee has taken or received—

- (a) a benefit for the period under Division 3 of Part 11 of the *Industrial Relations Act 1990* or a law of another State or a Territory that corresponds to that Division; or
- (b) benefits in the nature of long service leave (however arising).

(2) Subsection (1) applies whether the period was before or after, or partly before and partly after, the commencement of this Part.

(3) A registered employee who—

- (a) in respect of a period of service as an employee in the building and construction industry (whether that period was before or after, or partly before and partly after, the commencement of this Part) becomes entitled to a benefit mentioned in subsection (1); and
- (b) for any part of the period, has applied for and taken (whether before or after, or partly before and partly after, that commencement) any long service leave in advance;

is not entitled to be credited under Division 3 of Part 5 with any service that the employee had in the industry during a period by reference to which the leave was calculated.

(4) A registered employee or the personal representative of a registered employee who is paid—

- (a) a long service leave payment under this Act; or
- (b) a long service leave benefit under a corresponding law;

for a period by reference to which the leave or benefit was calculated, is not entitled to a benefit under Division 3 of Part 11 of the *Industrial Relations Act 1990* or a benefit in the nature of long service leave under a scheme to which an exemption granted to an employer under section 11.35 of that Act relates.

(5) Subject to this Act, a person is entitled to the benefit provided by this Act despite any other Act.

Payments to employers

56.(1) Subject to subsection (4), if—

- (a) a person is provided with any benefits mentioned in section 55 for a period of service in the building and construction industry; and
- (b) the person—
 - (i) was, when those benefits were provided, a registered employee; or
 - (ii) is the personal representative of a person who, when the person died, was a registered employee;

the Board must, on application by the employer who provided the benefits, pay to the employer an amount calculated in accordance with the following formula—

$$\mathbf{EP} = \frac{\mathbf{S}}{\mathbf{220}} \times \frac{\mathbf{13}}{\mathbf{15}} \times \mathbf{P}.$$

(2) In subsection (1)—

“**EP**” (employer payment) means the amount to be paid to the employer;

“**S**” (service) means the number of days’ service with which the employee was credited in the register of employees immediately before the benefits accrued for the period during which the employee was employed under contract of employment by the employer;

“**P**” (pay) means the amount of ordinary pay in respect of a normal working week that is, in the opinion of the Board, payable to the registered employee on the day the employee starts long service leave.

(3) An application under subsection (1) must be made in writing—

- (a) within 3 months after the benefits were provided; or
- (b) within such longer period (not more than one year after the benefits were provided) as the Board allows.

(4) An employer is not entitled to be paid under this section—

- (a) a greater amount in respect of a person than the value of the benefits, mentioned in section 55(1), provided by the employer in

respect of the person, calculated by reference to the same period as the payment under this section is calculated; and

(b) an amount in respect of any day's service with which an employee has been credited in the register of employees if long service leave payment or a payment under this section has been made in respect of the day.

(5) Despite section 34(1), an employer is entitled to be paid, for a registered employee whose name has been removed from the register of employees under section 34(1), any amount that the employer would have been entitled to be paid under this section if the name of that registered employee had not been removed from the register of employees.

(6) If—

(a) a person is entitled to any benefits mentioned in section 55 for a period of service in the building and construction industry; and

(b) the person—

(i) was, when those benefits arose, a registered employee; or

(ii) is the personal representative of a person who, when the person died, was a registered employee; and

(c) the employer who is liable to provide those benefits satisfies the Board that the employer is unable to pay the full amount of the benefits; and

(d) the Board agrees;

the employer may pay to the Board an amount that represents the amount of the benefits less any amount that the employer would have been entitled to be paid under this section if the employer had paid the full amount of the benefits to the employee.

(7) If a payment is made to the Board under subsection (6), the Board must pay to the registered employee the value of the benefits to which the employee is entitled.

(8) Payment by an employer under subsection (6) is taken to be a compliance by the employer with section 11.29 of the *Industrial Relations Act 1990* in respect of the value of the benefits the employer, in accordance with that section, is required to pay the employee.

Entitlement to long service leave payment for service in reciprocating State or Territory

57.(1) A person who is a registered employee may apply to the Board in the approved form for the payment by the Board of long service leave payment calculated in accordance with the corresponding law of a reciprocating State or Territory if—

- (a) the person—
 - (i) has completed a period of service in that State or Territory or partly in that State or Territory and partly in Queensland; and
 - (ii) because of having completed the service, is entitled under the corresponding law to a long service leave benefit payable in or reducible to cash; and
- (b) the person would, if all of the service had been performed in Queensland, have been entitled to apply for long service payment under section 51.

(2) If a deceased registered employee was, immediately before the employee's death, entitled to apply for long service leave payment under subsection (1), the personal representative of the employee may apply to the Board in the approved form for the payment to be made.

(3) As soon as practicable after receiving an application under subsection (1) or (2), the Board must—

- (a) if satisfied that the applicant is entitled under the corresponding law to the payment of a long service benefit; and
- (b) if authorised by the corresponding authority to make the payment;

pay to the applicant the amount of that benefit calculated in accordance with that law.

(4) An application for the payment of an amount under this section may be included in an application under section 50 if the periods of service to which that payment relates are consecutive and not interrupted by an interval of more than the period prescribed for the purposes of this subsection.

(5) If the Board makes a payment under this section, the Board must, as soon as practicable after making the payment, take all appropriate steps to secure the reimbursement of the amount of the payment by the

corresponding authority of the reciprocating State or Territory concerned.

(6) If, under a provision of a corresponding law that corresponds to this section, the corresponding authority pays to a person an amount that, but for the payment, could have been payable as long service leave payment under this Act—

- (a) the obligation of the Board to make long service leave payment to that person is discharged; and
- (b) the Board must, as soon as practicable after being notified of the payment and if satisfied that the payment was properly made, reimburse the corresponding authority.

(7) The payment of an amount by the Board under subsection (6) is to be made in accordance with such terms (if any) as are specified in the agreement entered into under section 80 with respect to the State or Territory in which the relevant corresponding authority is established.

Board's liability confined to long service leave

58. The Board is not taken to be—

- (a) an employer of an employee; or
- (b) liable to pay amounts as—
 - (i) an employer for an employee; or
 - (ii) a person in a contractual relationship with an employee;

merely because the Board has paid, is paying, or is liable to pay, long service leave under this Act to or for the employee.

Payment when due

59.(1) An amount payable in respect of an entitlement under this Act becomes due when the Board is satisfied that the entitlement should be paid.

(2) The Board may, if the person entitled to the payment so requests, defer a payment that is due under subsection (1) for such period as is agreed between the person and the Board.

PART 7—LONG SERVICE LEAVE LEVY

Imposition of levy

60.(1) Subject to this Act, long service leave levy is imposed on the total cost of carrying out building and construction work that is started after the commencement of this Part.

(2) The Board may, for the purposes of this Part, determine the day on which building and construction work starts and the day on which the work is finished.

Amount or rate of levy

61. Long service leave levy for the total cost of carrying out building and construction work is such amount or rate as is specified in, or calculated in accordance with, the regulations.

When levy not payable

62. Long service leave levy is not payable—

- (a) for building and construction work if the Board determines under section 60 that the building and construction work started before the commencement of this Part; or
- (b) for building and construction work if long service leave levy has already been paid for the building and construction work or any building work that forms part of the building and construction work; or
- (c) in such other circumstances as may be prescribed by the regulations.

When levy becomes payable

63. Long service leave levy for building and construction work is due and payable before the work starts.

Liability for levy

64. Long service leave levy for building and construction work must be paid by—

- (a) the principal contractor responsible for carrying out the work; or
- (b) if there is no such principal contractor—the person or body responsible for carrying out the work; or
- (c) if there is not a person or body responsible for carrying out the work—the person or body for which the building and construction work is being carried out.

Crown and contractors to Crown

65.(1) In this section—

“**Crown**” includes a statutory body representing the Crown.

(2) Despite section 64, if—

- (a) long service leave levy is payable for building and construction work; and
- (b) the building and construction work is being carried out for the Crown; and
- (c) a person or body has entered into a contract with the Crown to carry out the building and construction work (other than a contract to execute part of the building and construction work);

the person or body is liable to pay the levy.

(3) Despite section 64, if—

- (a) long service leave levy is payable for building and construction work; and
- (b) the building and construction work is being carried out for the

Crown; and

(c) there is no person or body liable to pay the levy under subsection (2); and

(d) persons or bodies have entered into contracts with the Crown to carry out parts of the building and construction work;

each of those persons or bodies is liable to pay the levy.

(4) In the application of this Part to a person or body mentioned in subsection (3)(d), a reference to carrying out building and construction work is a reference to the carrying out of work under the contract entered into by the person or body.

Building and construction work for public authority

66. If the Board is satisfied that—

(a) building and construction work is to be carried out for—

(i) a Local Authority; or

(ii) any other body constituted by an Act or an Act of the Commonwealth, another State or a Territory; and

(b) all the persons to be employed on site in performing the building and construction work, or a part of the building and construction work, will be persons employed under a contract of employment with the Local Authority or the other body;

long service leave levy is not payable for the building and construction work or the part of the building and construction work, as the case may be.

Voluntary performance of building and construction work

67.(1) If—

(a) building and construction work is to be carried out by or on behalf of a body that, in the opinion of the Board, is a non-profit organisation; and

(b) the building and construction work is to be performed wholly or partly by voluntary labour;

then long service leave levy is not payable for the voluntary component of the building and construction work.

(2) In subsection (1)—

“**non-profit organisation**” means a body that is formed, or carried on, for any lawful object or purpose but not for pecuniary gain to its members;

“**voluntary component**” means the proportion, in the opinion of the Board, of the building and construction work that is the same proportion as the cost attributable to voluntary labour and donated building materials bears to the total cost of carrying out the building and construction work.

Offence for failure to pay levy

68. A person or body liable to pay long service leave levy must—

- (a) pay to the Board the amount of that levy, or of each instalment of that levy under section 72, before the due date for its payment; and
- (b) lodge with the payment the approved form.

Maximum penalty—

- (a) if the defendant is an individual—16 penalty units; and
- (b) if the defendant is a body corporate—32 penalty units.

Determination of cost of building and construction work

69.(1) For the purposes of this Part, the total cost of carrying out building and construction work is—

- (a) the contract price of the work; or
- (b) if there is no contract price—the cost of carrying out the work as determined by the Board.

(2) Despite subsection (1)(a), if the Board is satisfied that the contract price for carrying out building and construction work is not a genuine and accurate estimate of the total cost of the work, the cost may be determined by the Board.

Additional levy

70.(1) In this section, a reference to a person or body liable to pay long service leave levy is a reference to—

- (a) a person or body that has paid the levy, or was liable to pay the levy, when it was first due for payment, under section 64 or 65; or
- (b) subject to section 64, another person or body for which the building and construction work has been or is being carried out.

(2) A person or body liable to pay long service leave levy must, if so required by the Board by written notice, give to the Board such information as is specified in the notice in relation to the actual cost of carrying out the building and construction work concerned.

Maximum penalty—

- (a) if the defendant is an individual—16 penalty units; and
- (b) if the defendant is a body corporate—32 penalty units.

(3) If it appears to the Board that—

- (a) building and construction work for which long service leave levy is payable is wholly or partly completed; and
- (b) the cost of carrying out the building and construction work as then determined by the Board is more than the cost of carrying out the building and construction work as last determined by the Board; and
- (c) the difference between those costs is more than the prescribed amount;

the Board may, by written notice served on a person or body liable to pay the long service leave levy, require the person or body to pay to the Board, within such time as is specified in the notice, the additional amount of the long service leave levy specified in the notice.

(4) The additional amount of long service leave levy is to be calculated in accordance with the regulations.

(5) A person or body that is served with a notice under subsection (3) must comply with the notice.

Maximum penalty—

- (a) if the defendant is an individual—16 penalty units; and
- (b) if the defendant is a body corporate—32 penalty units.

(6) A notice under subsection (3) may be served on more than one occasion in respect of the same building and construction work.

Refunds of levy

71.(1) A person or body that has paid long service leave levy, on application in the approved form, is entitled to a refund of the amount of the levy if—

- (a) the building and construction work concerned has not been carried out; and
- (b) the Board is satisfied that the building and construction work is not to be carried out.

(2) If it appears to the Board that—

- (a) the building and construction work for which long service leave levy has been paid is wholly or partly completed; and
- (b) the cost of the building and construction work as then determined by the Board is less than the cost of the building and construction work as last determined by the Board; and
- (c) the difference between those costs is more than the prescribed amount;

the Board, on application in the approved form, is to refund to the person or body that paid the levy the amount calculated in accordance with the regulations.

(3) An application for a refund under this section may be made on more than one occasion in respect of the same building and construction work.

(4) An application for a refund under this section in respect of building and construction work may not be made later than one year after finish of the building and construction work.

Payment of levy by instalments

72.(1) Despite section 63, the person or body liable to pay long service leave levy may pay the levy by instalments in accordance with this section if the Board is satisfied that the cost of the building and construction work is more than the prescribed amount and that—

- (a) the time reasonably required to perform the building and construction work is longer than 1 year; or
- (b) the obligation of the person or body to pay long service leave levy in a lump sum is an undue burden.

(2) For the purposes of subsection (1)—

- (a) each instalment of long service leave levy for building and construction work is to be the amount determined by the Board and notified to the person or body liable to pay long service leave levy; and
- (b) the first instalment is due and payable before work is started on the building and construction work; and
- (c) the subsequent instalments are due and payable at such times before the finish of the building and construction work as the Board determines and notifies to the person or body.

(3) If a person or body pays long service leave levy by instalments, an instalment of long service leave levy that is not due and payable—

- (a) is not recoverable by the Board; and
- (b) does not bear interest under section 74.

(4) If a person or body fails to pay an instalment of long service leave levy on or before the due date for its payment—

- (a) the total amount of instalments unpaid on that date becomes due and payable to, and recoverable by, the Board; and
- (b) section 74 applies in respect of the unpaid balance of the long service leave levy;

as if the person or body were not paying long service leave levy by instalments in accordance with this section.

(5) The Board may accept the payment of an instalment of long service leave levy that is made after the due date for its payment.

(6) For the purposes of this section, an instalment mentioned in subsection (5) is, if the Board so directs, taken to have been paid on the due date for its payment.

Appointment of agents for collection of levy

73.(1) The Board may enter into agreements with agents appointed by it for the collection of long service leave levy.

(2) An agreement may provide for the payment of remuneration for an agent.

Interest on, and extension of time for payment of, levy

74.(1) An amount due in respect of long service leave levy and not paid before the due date for its payment bears interest at the prescribed rate.

(2) Except for the purpose of calculating the amount of interest payable under subsection (1), interest forms part of the unpaid long service leave levy and may be recovered as an amount due in respect of the long service leave levy.

(3) If the Board considers that special circumstances warrant its doing so in a particular case, the Board may direct that—

(a) the due date for payment of long service leave levy be varied to a later specified date; or

(b) the amount of any interest payable under subsection (1) be waived or reduced by a specified amount;

and the direction, despite anything to the contrary in this Act, is to be given effect.

Recovery of levy

75.(1) Long service leave levy, when it becomes due and payable, is a debt due to the Crown and payable to the Board.

(2) Long service leave levy that is not paid may be sued for and recovered in any court of competent jurisdiction by the Board or on behalf of the Board by any person appointed by it.

(3) If it appears to the Board that—

- (a) building and construction work is being, or has been, carried out; and
- (b) a person or body is liable to pay long service leave levy in respect of the building and construction work; and
- (c) the long service leave levy has not been fully paid;

the Board may make an assessment of the amount of long service leave levy that is due by that person or body in respect of the building and construction work.

(4) The Board is to cause notice of any such assessment to be served on the person or body to which the assessment relates.

Penalties no relief from levy

76. Payment of penalties under this Act does not relieve a person or body from liability to pay long service leave levy to which the person or body would otherwise be liable.

PART 8—APPEALS

Reconsideration by Board

77.(1) A person or body that is dissatisfied with—

- (a) a decision, determination, direction or notice made or given by the Board; or
- (b) the accuracy of—
 - (i) a notice given to the person or body under this Act; or
 - (ii) an entry in the register of employees;

may—

- (c) within 90 days after the decision, determination, direction or notice is given to the person or body; or
- (d) within such other time as may be prescribed; or
- (e) in relation to the register of employees—at any time;

apply to the Board, in writing, to give further consideration to the matter.

(2) The Board may make such determination in respect of a reconsideration under subsection (1) as it thinks proper.

(3) If the Board, within 30 days after receipt of a request under subsection (1), fails to give notification of its determination, it is taken to have made a determination refusing the request.

Appeal to Industrial Magistrate

78. A person or body mentioned in section 77(1) may—

- (a) instead of taking action under that section; or
- (b) if dissatisfied with a determination of the Board under section 77;

appeal to an Industrial Magistrate in relation to the matter.

Appeal from Industrial Magistrate to Industrial Court

79.(1) If the Board or a person or body is dissatisfied with a decision of an Industrial Magistrate in an appeal under section 78, the Board, person or body may appeal to the Industrial Court in accordance with the rules of court governing the practice of the Industrial Court.

(2) Unless the Industrial Court orders that additional evidence be heard, the appeal is to be by way of re-hearing of the evidence and proceeding before the Industrial Magistrate.

PART 9—MISCELLANEOUS**Arrangements with other States and with Territories**

80.(1) For the purposes of this Act, the Minister may, from time to time, enter into an agreement to carry out an arrangement mentioned in subsection (2).

(2) The Minister may agree to reciprocal arrangements, with respect to the matters to which subsection (3) applies, with the Minister charged with administering the law of another State or a Territory that provides for making payments of long service leave to persons engaged in the building and construction industry in the other State or the Territory.

(3) This subsection applies to—

- (a) the payment of long service leave to persons engaged in the building and construction industry; and
- (b) the exchange of information concerning credits and entitlements to payments between the Board and any authority established in the other State or the Territory concerned that has functions similar to those of the Board; and
- (c) such other matters relating to the payment of long service leave to such persons to which the Ministers may wish to agree.

(4) An agreement under subsection (1) may be amended or repealed by a subsequent agreement under that subsection.

Declaration

81.(1) Subject to subsection (2), the regulations may—

- (a) declare a State or Territory in relation to which an agreement under section 80 is in force to be a reciprocating State or Territory; and
- (b) declare a law of the State or Territory to be a corresponding law for the purposes of this Act.

(2) A declaration is not to be made under subsection (1)(b) unless the law provides for the payment of long service leave to, or in respect of, persons who are or have been engaged in the building and construction industry in the State or Territory.

Keeping of books and records

82.(1) A person or body that employs employees to perform building and construction work must keep such books and records as may be prescribed by the regulations containing such particulars as may be so prescribed relating to those employees.

(2) A person or body that is required by subsection (1) to keep any book or record must preserve the book or record for at least 6 years after the last entry is made in it.

Maximum penalty—

- (a) if the defendant is an individual—16 penalty units; and
- (b) if the defendant is a body corporate—32 penalty units.

Conflict of interest

83.(1) If a member of the Board has a personal or pecuniary interest that appears likely to conflict, or is capable of conflicting, with the proper exercise of the member's discretion or the proper performance of the member's duty in respect of a matter under this Act, the member must—

- (a) disclose the interest to the Minister; and
- (b) take no action in relation to the matter, except as authorised by the Minister.

(2) The Minister may direct a member of the Board who has such an interest to take specified action with a view to resolving the possible conflict.

(3) A member of the Board to whom a direction under subsection (2) is given must either comply with the direction so as to resolve the possible conflict or resign as a member.

Holders of office to act honestly and with propriety

84.(1) This section applies to—

- (a) a member of the Board; and
- (b) other persons who perform work on behalf of the Board.

(2) A person to whom this section applies must at all times act honestly in exercise of powers that the person has by virtue of being a person to whom this section applies.

(3) A person to whom this section applies must not make improper use of the office held by the person for the purposes of this Act—

- (a) to gain, directly or indirectly, an advantage for himself or herself or any other person; or
- (b) to cause detriment to the Board.

(4) A person to whom this section applies, or at any time applied, must not make improper use of information acquired by virtue of the office held by the person for the purposes of this Act—

- (a) to gain, directly or indirectly, an advantage for himself or herself or any other person; or
- (b) to cause detriment to the Board.

Maximum penalty—40 penalty units.

Authorised officers

85.(1) The Minister or Manager may authorise a person to exercise—

- (a) all the powers conferred by this Act on an authorised officer; or
- (b) any powers conferred by this Act on an authorised officer.

(2) The Manager must cause an identity card to be issued to an authorised officer.

(3) The identity card must—

- (a) contain a recent photograph of the authorised officer; and
- (b) be in a form approved by the Manager.

(4) A person who ceases to be an authorised officer must, as soon as practicable, return his or her identity card to the Manager.

Maximum penalty for contravention of this subsection—16 penalty units.

Authorised officer to produce identity card

86. An authorised officer is not entitled to exercise powers under section 87, 88, 89, 90 or 91 in relation to another person unless the authorised officer first produces the authorised officer's identity card for inspection by the person.

Entry and search—monitoring compliance

87.(1) An authorised officer, for the purpose of finding out whether the requirements of this Act are being complied with, may—

- (a) enter any place; and
- (b) exercise the powers set out in section 89.

(2) An authorised officer must not enter a place, or exercise a power under subsection (1), unless—

- (a) building and construction work is being performed at the place; or
- (b) the occupier of the place consents to the entry or exercise of the power; or
- (c) a warrant under section 90 authorises the entry or exercise of the

power.

Entry and search—evidence of offences

88.(1) Subject to subsection (3), if an authorised officer has reasonable grounds for suspecting that there is in a place a particular thing (in this section called “**the evidence**”) that may afford evidence of the commission of an offence against this Act, the authorised officer may—

- (a) enter the place; and
- (b) exercise the powers set out in section 89.

(2) If an authorised officer enters the place and finds the evidence, the following provisions have effect—

- (a) the authorised officer may seize the evidence;
- (b) the authorised officer may keep the evidence for 60 days or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
- (c) if the evidence is a document—while the authorised officer has possession of the document, the authorised officer may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised officer’s possession.

(3) An authorised officer must not enter the place or exercise a power under subsection (1) unless—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 91 that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, in the course of searching the place under subsection (1) under a warrant under section 91, an authorised officer—

- (a) finds a thing that the authorised officer believes, on reasonable

grounds, to be—

- (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the authorised officer believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
- (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

(5) An authorised officer who seizes or damages anything under this section must give written notice of particulars of the thing or damage.

(6) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if damage is caused to anything—the person who appears to the authorised officer to be the owner.

General powers of authorised officer in relation to places

89.(1) The powers an authorised officer may exercise under section 87(1)(b) or 88(1)(b) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in the place;
- (c) to take extracts from, and make copies of, any documents in the place;
- (d) to take into the place such equipment and materials as the authorised officer requires for the purpose of exercising any powers in relation to the place;
- (e) to require the occupier or any person in the place to give to the

authorised officer reasonable assistance in relation to the exercise of an authorised officer's powers mentioned in paragraphs (a), (b), (c) and (d).

(2) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1)(e).

Maximum penalty—16 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

Monitoring warrant

90.(1) An authorised officer may apply to an Industrial Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Industrial Magistrate may issue the warrant if the Industrial Magistrate is satisfied, by information on oath, that it is reasonably necessary that the authorised officer should have access to the place for the purpose of finding out—

- (a) whether the requirements of this Act are being complied with; or
- (b) the work practices prevailing in the place.

(3) If the Industrial Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Industrial Magistrate must not issue the warrant unless the authorised officer or some other person has given the information to the Industrial Magistrate in the form (either orally or by affidavit) that the Industrial Magistrate requires.

(4) The warrant must—

- (a) authorise the authorised officer, with such assistance and by such force as are necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 89; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the

- warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence related warrant

91.(1) An authorised officer may apply to an Industrial Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Industrial Magistrate may issue the warrant if the Industrial Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in the place a particular thing (in this section called **“the evidence”**) that may afford evidence of the commission of an offence against this Act.

(3) If the Industrial Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Industrial Magistrate must not issue the warrant unless the authorised officer or some other person has given the information to the Industrial Magistrate in the form (either orally or by affidavit) that the Industrial Magistrate requires.

(4) The warrant must—

- (a) authorise the authorised officer, with such assistance and by such force as are necessary and reasonable—
- (i) to enter the place; and
 - (ii) to exercise the powers set out in section 89; and
 - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

Obstruction etc. of authorised officers

92. A person must not, without reasonable excuse, assault, obstruct, hinder or resist an authorised officer in the exercise of a power under this Act.

Maximum penalty—16 penalty units.

False or misleading statements

93. A person must not—

(a) make a statement to an authorised officer exercising powers under this Part that the person knows is false or misleading in a material particular; or

(b) omit from a statement made to an authorised officer exercising powers under this Part any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular; or

(c) give an authorised officer exercising powers under this Part a document containing information that the person knows is false, misleading or incomplete in a material particular without, at the same time—

(i) indicating that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and

(ii) providing correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—16 penalty units.

Secrecy

94.(1) In this section—

“**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“**person to whom this section applies**” means a person who is or has been—

- (a) a member of the Board; or
- (b) a person performing work on behalf of the Board;

“produce” includes permit access to;

“protected document” means a document that—

- (a) contains information that concerns a person or body; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duty under or in relation to the administration of this Act;

“protected information” means information that—

- (a) concerns a person or body; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duty under or in relation to the administration of this Act;

(2) A person to whom this section applies must not—

- (a) make a record of any protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person any protected information concerning another person or a body;

unless the record is made, or the information is divulged or communicated—

- (c) under or for the purposes of the administration of this Act; or
- (d) in the performance of duties, as a person to whom this section applies, under or for the purposes of the administration of this Act;

Maximum penalty—40 penalty units.

(3) Subsection (2) does not prevent a person from divulging or communicating information to a corresponding authority, or a member, officer or employee of a corresponding authority, for the purpose of the administration of this Act or a corresponding law.

(4) Subsection (2) does not apply to disclosure of information—

- (a) for the purposes of this Act; or
- (b) with the authorisation of the Minister; or

- (c) ordered by a court to be disclosed for the purposes of proceedings before it; or
- (d) required by law to be disclosed.

Proceedings for offences

95.(1) Proceedings for an offence against this Act are to be taken in a summary way before an Industrial Magistrate.

(2) Proceedings for an offence against this Act may only be instituted—

- (a) by the Manager; or
- (b) by any other person who is authorised in writing by the Manager to institute the proceedings.

Certain persons liable for offences by unincorporated bodies

96.(1) In this section—

“**executive officer**” means the chairperson, by whatever name called, of an unincorporated body.

(2) If an unincorporated body is subject to the provisions of this Act, the executive officer or, if there is no executive officer, the secretary of the body must ensure that the body complies with the provisions.

Maximum penalty—16 penalty units.

(3) If an unincorporated body fails to pay long service leave levy, the executive officer or, if there is no executive officer, the secretary of the body is taken to have incurred the debt that results from the failure and may be sued for the debt under section 75.

(4) Before instituting a proceeding against a person under subsection (3), the Board must cause a copy of the notice mentioned in section 75(4) to be served on the person.

(5) It is a defence to—

- (a) a prosecution brought against a person for an offence against subsection (2); or
- (b) proceedings instituted against a person under subsection (3);

to prove—

- (c) that the failure of the unincorporated body to comply with a provision of this Act, or to pay long service leave levy, happened without the person's consent or connivance; and
- (d) that the person took all reasonable steps to—
 - (i) prevent the failure; or
 - (ii) ensure that the levy was paid.

Laws applicable to proceedings before Industrial Magistrates

97.(1) The provisions of section 18.52(2), (3) and (4) of the *Industrial Relations Act 1990* apply to a proceeding before an Industrial Magistrate for an offence against this Act.

(2) An Industrial Magistrate has all the powers conferred on an Industrial Magistrate by the *Industrial Relations Act 1990* and the rules of court or regulations made for the purposes of that Act, so far as those powers are appropriate, in respect of an appeal under section 78.

Evidentiary provisions

98. In a proceeding for the purposes of this Act—

- (a) in the absence of evidence to the contrary, it is not necessary to prove—
 - (i) the appointment of a member of the Board or of a person appointed for the purposes of this Act; or
 - (ii) the authority of the chairperson of the Board, or a person appointed for the purposes of this Act, to take an action, institute a proceeding or make or give any order, direction, requirement or notice;
- (b) an entry in the register of employees or register of employers, or a copy of or extract from the register certified by the Manager to be a true copy or extract, is evidence of the matters specified in the entry, copy or extract until the contrary is proved;
- (c) a signature appearing to be that of the chairperson of the Board, or

a person appointed for the purposes of this Act, is taken to be the signature it appears to be until the contrary is proved;

(d) a certificate appearing to be signed by the Manager certifying that the name of a person is not in the register of employees or the register of employers is evidence that the person is not, or was not at the material time, a registered employee or a registered employer, as the case may be.

Certificate as to payment of levy

99. A certificate that appears to be signed by the Manager certifying—

(a) that, on a specified date, a specified amount of long service leave levy, in respect of carrying out of specified building and construction work, was paid to the Board or an authorised agent of the Board; or

(b) that, during a specified period, a specified amount of long service leave levy, in respect of carrying out of specified building and construction work, was not so paid; or

(c) that no amount of long service leave levy was payable in respect of specified building and construction work;

is evidence of the matters certified.

Indemnity to persons administering Act

100. The Board is to indemnify all persons engaged in giving effect to this Act against all actions, proceedings and claims in respect of—

(a) acts done, or omissions made, in good faith under this Act; or

(b) acts done, or omissions made, in good faith and without negligence for the purposes of this Act.

Protection of employee from dismissal

101. An employer must not dismiss a person employed by the employer, merely because the person has given information under this Act to an officer of the Board.

Maximum penalty—

- (a) if the employer is an individual—16 penalty units; and
- (b) if the employer is a body corporate—32 penalty units.

Regulations

102.(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable on conviction by a maximum penalty of—

- (a) in the case of an individual—16 penalty units; and
- (b) in the case of a body corporate—32 penalty units.