

Contract Cleaning Industry (Portable Long Service Leave) Bill 2005

Explanatory Notes

Objectives of Legislation

The objective of the Bill is to provide a portable long service leave scheme for eligible workers in the contract cleaning industry in Queensland. The scheme will operate in a similar manner to the existing portable long service leave scheme for the building and construction industry, which has been operating in Queensland since 1992, and is administered by QLeave.

Reasons for the Legislation

The Queensland Government position on portable long service leave schemes (PLSLS) as stated to the Queensland Industrial Relations Commission (QIRC) Review of Long Service Leave (Case No.B1404 of 1999) is that prior to government enacting legislation to support a PLSLS the industry parties must reach agreement on issues such as labour cost, employment impact and arrangements for funding the scheme. Industry parties are also to be encouraged to consider implementing schemes through an award, agreement or in legislation.

Since 2002 the unions and employer organizations in the contract cleaning industry have jointly lobbied government for the establishment of a PLSLS.

Union stakeholders strongly support a PLSLS claiming that within the contract cleaning industry it is common for workers to frequently move from one employer to another to find continuous work or to be transferred when a contract changes hands. Consequently, many workers do not stay long enough with one employer to qualify for long service leave although they frequently remain in the industry for longer than the qualifying period for long service leave entitlement (10 years).

Employer support for a PLSLS in this industry is based on the impact of recent federal and state industrial tribunal decisions which indicate that where a contract changes hands and existing workers are retained in employment by the new employer (i.e. a transfer), then those workers will have portability of long service leave entitlements. This results in the last

employer bearing the total liability for all long service leave accrued both before and after the transfer.

Costs for Government Implementation

The PLSLS will be funded by employer contributions calculated as a percentage of worker's wages. Independent actuarial assessment has calculated the necessary employer contributions at 2.0% of worker's wages. This level of contribution will allow the scheme to be administratively self supporting as well as meet its commitments to pay long service leave to industry workers.

Fundamental Legislative Principles

Cluses 58 (Authority may require information or documents from employer) and 125 (Authorised officer may require record kept under s66) allow provisions for gathering of information. In complying with this provision the information may tend to incriminate a person. Clause 58 includes a defence for self-incrimination; clause 125 does not. The requirement to keep records and provide information is central to the operations of this Bill. The provisions allow an efficient process for the Authority to seek information from an employer that they have or are required to keep and allow the employer reasonable time to comply. In the absence of this provision, the Authority would need to use warrants to access this information in a more formal and intrusive manner. The absence of a protection from self-incrimination in clause 125 is considered appropriate in the circumstances.

Clause 65 (Civil penalty for failure to give return or pay levy) makes a person liable for a civil penalty (currently 1 penalty unit [\$75] per month) for failing to give a return or pay a levy. This penalty is in addition to any offence penalty ordered by an Industrial Magistrate and interest for late payments. While as a general rule the imposition of a penalty is a matter for the courts after an offence has been proved beyond a reasonable doubt, it is considered appropriate that a civil penalty provision be included in the Bill in the interests of achieving greater compliance in a cost effective manner. Pursuing employers for a small amount of unpaid levy through a prosecution action is not cost effective. The existence of the civil penalty provision is a cost effective method of encouraging compliance by signaling the intentions of the administering agency. The imposition of the civil penalty avoids the cost of court actions and will assist in paying for the cost of pursuing offenders. A civil penalty provision is a feature of the legislation governing the portable long service leave scheme for the

contract cleaning industry in the A.C.T. and has reportedly assisted in industry compliance in that jurisdiction.

Clauses 133 (Executive officers must ensure corporation complies with Act) and 134 (Liability of directors for amounts) permit the prosecution of executive officers of a corporation where the corporation has committed an offence and for the liability for offence penalties to attach to a company director.

There are precedents for the use of some or all of these types of provisions in other legislation (e.g. the *Industrial Relations Act 1999*). Their inclusion in the Bill is considered necessary for the effective enforcement of penalties and to prevent unscrupulous business operators from hiding behind the status of a corporation and therefore avoiding any personal responsibility and making collection of the levy and worker information impossible.

Clause 137 (Offence of improper disclosure of information) subclause (e) provides for the Minister to authorise disclosure of information obtained in the administration of this Act. Such a provision will allow QLeave to share information e.g. industry participant and payroll data with other government agencies such as Workcover to facilitate compliance and other objectives of the Bill. The clause gives an express power to the Minister to authorise a person to make such a disclosure.

Consultation

The initial impetus for the establishment of a PLSLS for the contract cleaning industry in legislation and administration of that scheme by government came from the bi-partisan support of unions and employer organisations in the industry. Detailed consultation with those stakeholders during its development has established clear support for the Bill.

A Regulatory Impact Statement was prepared and released for public comment in relation to the proposed Regulation. Only one formal submission was received. This submission was from the Building Service Contractors' Association of Australia, supporting the introduction of the Scheme and recognising the need for the Scheme to be implemented in Queensland.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides a short title of the Act as the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

Commencement

Clause 2 provides that the provisions of the Act will commence on 1 July 2005

Act binds all persons

Clause 3 provides for the Act to bind all persons including the State, the Commonwealth and the other States to the extent of the power of Parliament.

Main purpose of this Act

Clause 4 details the main purposes of the Act as providing for a portable long service leave scheme for the contract cleaning industry and requirement for registration of both employers and workers.

Part 2 Interpretation

Definitions

Clause 5 provides for particular terms in the Act to be defined in a dictionary in Schedule 2.

Meaning of *cleaning work*

Clause 6 provides the meaning of “cleaning work” by confirming the nature of included work. This includes work performed in Queensland that has as its chief or only function, the bringing of premises into or keeping of premises in a clean state.

Meaning of *contract cleaning industry*

Clause 7 provides the meaning of the “contract cleaning industry” defining it as the industry in which individuals are engaged to perform cleaning work for other people. This is not designed to include people engaged directly to perform cleaning work (e.g. a house owner engaging a person to clean the owner’s house).

Who is an *employer*

Clause 8 provides a definition of an “*employer*” as a person engaging 1 or more workers to perform work in the contract cleaning industry. Nominated entities are excluded for the purposes of the meaning of employer including the Commonwealth, State or Local Government or a company whose only workers are directors if the directors participate in the management of the company or share in its profits.

Who is a *worker*

Clause 9 provides the definition of a “*worker*” as an individual engaged under a contract of service by an employer to perform cleaning work or who provides labour only or works for another person (unless the person performing the work is paid to achieve an outcome, is required to supply plant and equipment or tools of trade and is liable for any defect rectification). “*Worker*” definition also includes a person who performs cleaning work and supervision of other workers regardless of the position title.

Specific exclusions from the “*worker*” definition are persons working in a managerial or clerical capacity, persons who are a member of a partnership where they share in the profits and/or participate in management and persons employed under a contract of service with the Commonwealth, State or Local Government.

Meaning of *information notice*

Clause 10 defines an *information notice* as a notice to a person regarding a decision by the authority and provides for the person to apply for a reconsideration of any decision and relevant time limits.

Grounds that are reasonable in the circumstances

Clause 11 requires that any grounds for a reconsideration of a decision made by the authority, by a person and under this Act, must be reasonable in the circumstances.

Notes in text

Clause 12 describes a note in the text of this Act as being a part of the Act.

Part 3 Contract Cleaning Industry (Portable Long Service Leave) Authority

Division 1 Establishment of authority

Authority established

Clause 13 provides for the establishment of the Contract Cleaning Industry (Portable Long Service Leave) Authority

Division 2 Functions and powers of authority

Authority's functions

Clause 14 sets out the primary function of the Authority as providing an equitable and efficient system of portable long service leave to workers in the contract cleaning industry. In addition, other functions include providing educational and awareness programs to the industry, giving advice and making recommendations to the Minister and performing other functions conferred under this or another Act.

Authority's powers

Clause 15 establishes the powers of the Authority as the powers of an individual and lists some examples. These powers may be exercised inside and outside of Queensland.

Division 3 Establishment of board for authority

Board established

Clause 16 prescribes the Authority as having a board of directors whose role includes responsibility for the Authority's management and commercial policy, ensuring the Authority achieves corporate goals and objectives and performs its functions in an appropriate, effective and efficient way.

Composition of board

Clause 17 prescribes the composition of the board and how they are to be appointed. The board will have not more than 8 directors consisting of the chairperson, deputy chairperson, 2-3 directors as representatives of employers and 2-3 directors as representatives of workers. The number of representatives from each group must be the same. The deputy chairperson must have specified knowledge or experience.

Appointment of directors

Clause 18 specifies the process of appointment of the board of directors is by the Governor in Council by industrial gazette notice for a term of not more than 3 years.

Disqualification from board

Clause 19 sets out criteria for disqualification from the board of persons declared insolvent or having a conviction for an indictable offence.

Vacation of office

Clause 20 sets out the conditions under which a director vacates the office of director.

Casual vacancy

Clause 21 prescribes the manner of filling a casual vacancy on the board by the Governor in Council.

Remuneration and other entitlements of directors

Clause 22 provides for the remuneration and other entitlements of board of directors to be set by the Governor in Council.

Division 4 Business of the board

Conduct of business

Clause 23 prescribes the conducting of business by the board in a manner that is considered appropriate by the board.

Frequency of meetings

Clause 24 requires the chairperson to call meetings of the board as required however at least once in every 3 months. The chairperson must call a board meeting if one worker and one employer director so request.

Presiding at meetings

Clause 25 provides for the chairperson to preside at all meetings. In the absence of the chairperson, the deputy chairperson will preside at meetings with all the powers of the chairperson.

Quorum

Clause 26 specifies the need to have a quorum of 3 directors, inclusive of the chairperson or deputy chairperson, one director representing workers and one director representing employers before the conduct of a meeting of the board.

Conduct of meetings

Clause 27 provides for the conduct of the board meetings with reference to voting, including abstaining and casting votes, and participation using contemporaneous and continuous communication.

Decisions made by written reference

Clause 28 specifies the written reference process for decisions made by directors at other than a meeting of the board .

Minutes

Clause 29 prescribes the keeping of records of all board decisions with those records being presented to the next Board meeting for confirmation and subsequent sign-off by the director presiding at that subsequent meeting.

Disclosure of interests by directors of the board

Clause 30 sets out provisions for disclosure by directors of any interest (financial or otherwise) in a decision to be considered by the board and their disqualification from taking part in any discussion or decision about the issue.

Division 5 Administration

Administration subject to Minister

Clause 31 specifies the administration of the Act by the Authority, subject to the Minister

General manager

Clause 32 appoints the General Manager of the Building and Construction Authority as General Manager

Management of authority by general manager

Clause 33 stipulates the General Manager to manage the Authority subject to the board and permits any thing done by the General Manager for or on behalf of the Authority to be taken as done by the Authority.

Staff of the authority

Clause 34 specifies that the Building and Construction Authority's staff are to provide administrative support to the Contract Cleaning Industry

(Portable Long Service Leave) Authority and anything necessary for the performance of the functions of the authority.

Authority's seal

Clause 35 specifies the safe-keeping and use of the Authority's seal.

Judicial notice of signatures

Clause 36 requires judicial notice to be taken of the signature of a person who holds or who held a relevant office within the Authority.

Document presumed to be properly made

Clause 37 specifies the proper making of any Authority documentation if signed by the Chairperson, Deputy Chairperson or the General Manager.

Contracts or agreements

Clause 38 details the manner in which the Authority's power to make contracts or agreements is to be exercised.

Agreement about administration of this Act

Clause 39 provides for an agreement between the Authority and the Building and Construction Authority regarding the payment of administration costs such as staff, electricity and rent and the subsequent recovery of these costs.

Division 6 Financial Provisions

Funds of authority

Clause 40 specifies the categories and permissible application of funds of the Authority.

Proposed budget and progress budget reports

Clause 41 establishes the requirement for Ministerial approval of the annual budget and provision of progress reports on the operations of the budget.

Actuarial investigation of funds

Clause 42 specifies the requirements for actuarial investigations at least every 2 years and for the board to report to the Minister on these findings and make recommendations in regard to actuarial position and adequacy of funds.

Application of Finance Acts

Clause 43 establishes the Authority to operate as a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Part 4 Registration

Division 1 Registration of workers

Authority to keep register of workers

Clause 44 requires that the Authority must keep a register of registered workers in the contract cleaning industry in Queensland

Particulars to be entered in register of workers

Clause 45 details the particulars to be entered into the Authority's register for each registered worker.

Application for registration as a registered worker

Clause 46 provides for an application to become a registered worker to be made in an approved form.

Grant or refusal to grant application for registration as a registered worker

Clause 47 requires the Authority to consider applications for worker registration and make a decision for approval or refusal of applications. In cases of refusal the applicant must be given an information notice

Worker may become a registered worker other than by application

Clause 48 provides for a person to become a registered worker other than by application through information received by the Authority showing them to be a worker.

When does a person become a registered worker

Clause 49 specifies the manner in which a registration date is determined in different circumstances. In any event the earliest registration date is 1 July 2005.

Cancellation of registration as a registered worker

Clause 50 details the circumstances for cancelling the registration of a registered worker and the required processes for notification of cancellation and removal from the register.

Division 2 Registration of employers

Authority to keep register of employers

Clause 51 requires that the Authority must keep a register of registered employers in the contract cleaning industry

Particulars to be entered into register of employers

Clause 52 details the particulars to be entered into the Authority's register for each registered employer.

Application for registration as a registered employer

Clause 53 requires an employer to apply for registration in an approved form within 7 days after becoming an employer. A penalty is prescribed for failure to apply for registration and for failure to complying with a request for information.

Court order about application for registration as a registered employer

Clause 54 specifies that in addition to imposing a penalty for non-compliance the court may order the employer to apply to the Authority for registration within a stated time and provides for a penalty for failure to comply.

Grant or refusal to grant application for registration as a registered employer

Clause 55 requires the Authority to consider an application for registration, grant or refuse such an application and if refused ensure that the employer is given an information notice.

Employers to give notice of a change to information given

Clause 56 requires the employer to give notice to the Authority within 14 days of any change to information in the register (other than the person's date of registration as an employer). A penalty is prescribed for failure to comply.

Cancellation of registration as a registered employer

Clause 57 provides for the application for cancellation of registration of employers who no longer engage workers to perform cleaning work.

Division 3 Power to ensure employers are registered

Authority may require information or documents from employer

Clause 58 provides for the Authority to pursue a person believed to be an unregistered employer through a written notice seeking information or documentation within a stated time. A penalty is prescribed for failure to comply.

Part 5 Service credits, returns and notices

What is an *engagement period* for a worker

Clause 59 specifies an *engagement period* as commencing when a worker is engaged by an employer to undertake cleaning work and ending on the day the person ceases to be engaged by an employer. It is not relevant whether it is the employer that engages the person is the employer who stops engaging the person. This provision underlies the concept of continuity of engagement in the industry and not directly to one employer.

The engagement period is taken to include a day the worker did not perform cleaning work because the worker was dismissed for the period to ensure the worker did not take long service leave during the employer's employment or the worker sustained an injury preventing the worker from performing contract cleaning work.

Crediting service

Clause 60 stipulates that if cleaning work is performed in a return period, then the worker is credited with 1 day's service for each day in the return period, irrespective of whether the worker performed cleaning work on a particular day. The worker must not be credited for any day that is not part of an engagement period.

In the case of injury, a worker will receive credited service from the day of injury to a period of 6 months, after the day of injury ends or if the worker engages in employment, whichever first occurs.

Limitations on crediting service

Clause 61 sets some limitations on crediting service including a maximum total of 365 days per year.

Returns

Clause 62 requires the employer to submit a return for the period, in the approved form, within 14 days after the end of the nominated return period. Examples of the information required on the return are provided. Verification of the information provided may be requested by the Authority. A penalty is prescribed for failure to comply with specified obligations.

Payments of levy

Clause 63 requires an employer to pay to the Authority the levy payment for each worker as determined in accordance with this act. A penalty is prescribed for failure to comply with specified obligations.

Exemption from lodging return

Clause 64 provides for an employer to apply for exemption from lodging returns in the approved form. The authority may grant the exemption if satisfied that the employer no longer engages worker/workers to perform cleaning work or the employer complies with or makes contributions to a similar scheme in another State. The exemption may be revoked if it is no longer applicable and the authority must provide an information notice about the decision.

Civil penalty for failure to give return or pay levy

Clause 65 requires payment of a civil penalty for failing to lodge a return or make a levy payment within the required time. Provision is also made for the Authority to remit these amounts given the circumstances. The courts may in addition to finding a person guilty of an offence in relation to lodging a return or paying the levy make an order to have them lodge the return and pay the levy. This penalty is equivalent to the amount of one penalty unit, (currently \$75) and is similar to that in the A.C.T. legislation and the S.A. building industry long service leave legislation. In both cases it has had a very positive influence on compliance as well as going some way to offset the costs of the additional resources needed to pursue non-payment. An additional safeguard has been included by limiting it to 40 units.

Employer to keep record for each worker

Clause 66 specifies the particular records that an employer must keep for each worker. These records are to be kept for at least 6 years after the last entry is made and may be required for inspection by an authorized officer. A penalty is prescribed for failure to comply with specified obligations. The records that the employer is required to keep reflect those required under industrial relations legislation and should not impose any additional material requirements

Notice to registered workers about service credits

Clause 67 requires the Authority to give an annual notice to all registered workers detailing certain information recorded in the register of workers. This includes the number of days' service credited for the financial year, the overall total service credited since registration and the total ordinary wage amount paid in the financial year.

Decisions about ordinary wages by the authority

Clause 68 provides for the Authority to make a decision regarding total ordinary wage amounts stated by the employer in a return. If the Authority decides that the total ordinary wages stated is not reasonable it may specify another amount as the ordinary wages of the worker and provide an information notice about the decisions as well as notifying the employer of any sums due.

Retrospective service credits

Clause 69 permits registered workers to be granted retrospective service credits of up to 5 years for service with one or more employers in the cleaning industry during the 5 years prior to the commencement of the scheme. A maximum of 365 days will be credited for any year in the 5 year period.

The long service leave liability will remain with the employer of a worker who has an entitlement to long service leave under the *Industrial Relations Act 1999* at the commencement of this Act. In these cases no retrospective credit will be made.

Time frames for application for retrospective service credits

Clause 70 specifies timeframes for an application for retrospective service credits as 2 years after the commencement of this Act or a longer period if the Authority considers special circumstances exist. An application must be made in the approved form and be accompanied by proof that the applicant worked in the industry and proof of the ordinary wages for the period covered by the application.

Part 6 Long Service Leave

Application for long service leave entitlement

Clause 71 permits a registered worker or the personal representative of a deceased registered worker to make application for a long service leave entitlement.

Entitlement to long service leave

Clause 72 specifies the entitlement to long service leave of 8.67 weeks after the registered worker has accrued 3650 days or more service (10 years x 365 days). A proportionate payment of long service leave is due if the worker has accrued at least 2555 days service where the worker permanently ceases work in the industry or dies. The entitlement does not diminish any other entitlement to long service leave, but enhances the benefits available to workers by recognizing service to the industry rather than to a single employer.

Amount of long service leave payment

Clause 73 details that the amount of long service leave payment to a worker is calculated by a formula of the sum of earnings of a worker as a proportion of their moderated wages over time, paid at the current rate of pay for a nominated classification level at the time the application is made. The classification level to be used in the calculation will be prescribed under a regulation. Leave is not to be paid for periods of less than 5 days.

Long service leave not payable in certain cases

Clause 74 prohibits a worker from claiming payment for a long service leave entitlement for a day's service if a long service leave payment has already been paid for the day under this or another Act, award or relevant industrial agreement.

Payments to employers

Clause 75 specifies that an employer who pays a registered worker all or part of their long service leave entitlement may apply for reimbursement. The amount to be paid to an employer is calculated by a formula of the sum of earnings of a worker as a proportion of their moderated wages over time,

paid at the current rate of pay for a nominated classification level at the time the payment was made by the employer.

The clause also specifies a 3 month period to apply after the employer makes the payment however this may be extended up to 2 years. The clause also stipulates that the employer must not be paid more than the amount they paid to the worker.

Under existing industrial relation legislation in the event that a contract changes hands and existing workers are retained in employment by the new employer, there is portability of long service leave entitlements. This leads to the last employer bearing that full liability of long service leave for all leave accrued both before and after the transfer. This provision will allow employers in these circumstances to receive maximum benefit possible under the act.

If employer unable to pay benefit

Clause 76 provides for employers who are unable to pay a long service leave benefit to pay to the Authority the amount of the benefit less an amount that the employer would have been entitled to be paid if the full amount had been paid to the worker. On payment by the employer to the Authority, the Authority must pay to the registered worker the value of the worker's entitlement.

Authority may pay if employer insolvent

Clause 77 specifies that where an employer becomes insolvent a long service leave payment be made directly by the Authority to the worker or personal representative and is the difference between the employer payment to the worker and the amount representing the value of the worker's long service leave.

If credit for service accrued elsewhere

Clause 78 permits the Authority to approve an entitlement based on service with this scheme and another scheme with which reciprocal arrangement has been made (e.g. a scheme in another state). If the Authority makes a payment in terms of this clause it must as soon as practicable take steps to secure reimbursement by the corresponding Authority.

If a corresponding authority pays

Clause 79 provides for the accruing of credits within Queensland however another Authority pays the entitlement and ensures that the Queensland Authority makes reimbursement of the payment in accordance with an agreement as part of arrangements with other states (see clause 144).

Authority's liability confined to long service leave

Clause 80 clarifies that the Authority is not taken to be an employer of a worker who takes or may take a benefit under the Act. The Authority's liability is confined to long service leave.

Payment may be deferred

Clause 81 provides for the entitlement payment by the Authority to be deferred upon request by a person making application when agreed between the person and the authority.

Part 7 Long service leave levy

Imposition of levy

Clause 82 imposes a levy on ordinary wages paid to workers in the contract cleaning industry.

Amount of levy

Clause 83 provides that the amount of the levy for a worker is a percentage prescribed by a regulation, of the ordinary wages paid to the worker

Authority may give notice if levy is not paid

Clause 84 provides for the Authority to seek information or documents relating to wages if the Authority believes that all or part of the levy has not been paid. A penalty is prescribed for failure to comply with specified obligations. An individual need not comply if by doing so it might tend to incriminate the individual.

Additional levy payments

Clause 85 permits the assessment, written notice of additional payment and payment of an additional amount of levy where the levy payable is more than the levy paid for a worker. It is an offence not to pay the additional amount of levy within 14 days of notice for additional payment. A penalty for failure to comply, is prescribed.

Appointment of agents for collection of levy amounts

Clause 86 permits the Authority to enter into an agreement with an agent for the collection of the amounts of long service levy. This provision is identical to that in the building industry where for ease of payment by levy payers, it may be paid at any Australia Post Office.

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

Clause 87 prescribes that any levy that has not been paid by the due date will bear an amount of compound interest as prescribed by regulation. Where the Authority considers that there are special circumstances it may defer payment of the levy or waive or reduce the amount of interest payable.

Recovery of levy amount

Clause 88 provides for the Authority to recover an unpaid levy as a debt and may be sued for and recovered in a court.

Penalties no relief from levy

Clause 89 provides that the payment of a penalty does not relieve the person from the liability to pay the levy.

PART 8 Appeals

Division 1 Purpose of this part

Purpose of part 8

Clause 90 provides for a reconsideration and appeals from either a decision made, an entry made to either the register of workers or register of employers or a direction or notice given, by the authority.

Division 2 Internal reconsideration of original decision

Reconsideration of original decision of authority

Clause 91 provides for a person aggrieved by an original decision of the Authority to make a written application to the authority for a reconsideration of the matter. The clause sets out a process and time limits for dealing with the application for reconsideration.

Division 3 Appeals to industrial magistrate

Appeal

Clause 92 provides for application, timeframes and processes for a person not satisfied with an original decision to appeal to an industrial magistrate.

Starting appeal

Clause 93 details processes for commencing an appeal to an industrial magistrate.

Directions

Clause 94 provides for the industrial magistrate to issue directions about the conduct of the appeal.

Where appeal heard

Clause 95 provides for the appeal to be heard at the place the notice of appeal is filed unless otherwise directed by an industrial magistrate.

Attendance notice

Clause 96 provides for an industrial magistrate to require a person to attend a hearing of the appeal to give evidence or produce documents by sending the person a written attendance notice. A penalty is prescribed for failure to comply with specified obligations.

Division 4 Appeal to industrial commission

Clause 97 provides for an appeal to the industrial commission against a decision of the authority regarding retrospective credits.

Nature of appeal

Clause 98 provides for the nature of an appeal to be by way of rehearing on the record but also allows for the hearing of fresh or additional evidence at the discretion of the commission.

Decision on appeal

Clause 99 requires the industrial commission to deal with an appeal promptly and any decision is final and conclusive.

Division 5 Appeal to Industrial Court

Appeal from industrial magistrate to Industrial Court

Clause 100 provides that the authority or a person may appeal to the industrial court if dissatisfied with a decision of the industrial magistrate or industrial commission.

Part 9 Authorised officers and their powers

Division 1 Authorised Officers

Appointment and qualifications

Clause 101 provides that the General Manager may appoint public service employees or any other person prescribed under a regulation as an authorised officer but only if satisfied that the person is qualified because of expertise or experience.

Appointment conditions and limit on powers

Clause 102 provides that authorised officer powers may be limited by conditions stated in an instrument of appointment, a regulation or a notice signed by the general manager.

Issue of identity card

Clause 103 provides that an authorised officer must be issued with an identity card by the general manager containing specified information including an expiry date. A single identity card may be issued to an authorised officer exercising powers under more than one Act.

Production or display of identity card

Clause 104 provides that in exercising a power in relation to a person an authorised officer must produce their identity card for inspection before exercising the power or have the card clearly visible to the person. If this is not practicable the card must be produced at the first reasonable opportunity.

When authorised officer ceases to hold office

Clause 105 specifies when an authorised officer ceases to hold office including in accordance with any condition placed on holding the office of authorised officer.

Return of identity card

Clause 106 provides that a person who ceases to be an authorised officer must return their identity card within 21 days of the cessation. A penalty is prescribed in respect of non-compliance with the provision.

Division 2 Procedure for entry

Power to enter places

Clause 107 provides power to authorised officers to enter places with the occupier's consent, a public place, where entry is authorised by a warrant or to an employer's place of business. An authorised officer's power to enter places with the purpose of asking consent is also set out in this clause.

Entry with consent

Clause 108 provides for an authorised officer to enter a place with the consent of the occupier once the purpose of entry is explained and the occupier advised that the occupier is not required to give consent. If consent is given the authorised officer may ask the occupier to sign an acknowledgement of consent.

Application for warrant

Clause 109 provides for an authorised officer to apply in writing to an industrial magistrate for a warrant for a place.

Issue of warrant

Clause 110 provides for the issuing of a monitoring warrant by an industrial magistrate for entry to a place once reasonable grounds are established. The industrial magistrate is to issue the warrant if satisfied evidence of an offence is at the place or will be within the next 7 days. Details the warrant must state are outlined including the hours of entry and the date the warrant expires.

Application by electronic communication and duplicate warrant

Clause 111 provides for an application for a warrant to be made by electronic communication and for the issuing of a duplicate warrant for

administrative purposes. This may only be made in urgent or special circumstances.

Defect in relation to a warrant

Clause 112 provides that a warrant cannot be invalidated by a defect in the warrant unless the defect affects the substance of the warrant in a material particular.

Warrants – procedure before entry

Clause 113 provides for the processes an authorised officer named in a warrant must take before entering the place under the warrant.

Division 3 Powers of authorised officers after entry

General powers of authorised officer after entering places

Clause 114 provides the general powers of an authorised officer who enters a place.

Power to require reasonable help or information

Clause 115 requires an occupier or a person at the place to give reasonable help to an authorised officer to exercise powers in an investigation situation. It is an offence not to provide reasonable assistance to the authorised officer.

Division 4 Power of authorised officers to seize evidence

Seizing evidence at place

Clause 116 provides for the circumstances under which an authorised officer may seize any thing at a place to provide evidence relevant to an investigation being conducted.

Securing seized things

Clause 117 provides for the securing of items seized by an authorised officer

Tampering with seized things

Clause 118 provides that a person must not tamper with a thing seized by an authorised officer or with something restricting access to it. A penalty is prescribed for failure to comply with specified obligations.

Powers to support seizure

Clause 119 provides powers of an authorised officer to support seizure by requiring a person in control of the thing to take it to a stated place in a stated time. A penalty is prescribed for failure to comply with written requirements made by authorised officer.

Receipt for seized things

Clause 120 requires the authorised officer to give a receipt for a seized thing to the person from whom it was seized or for a receipt to be left in a conspicuous position. The receipt must generally describe the thing and its condition. The requirement to give a receipt is waived where it is impracticable or unreasonable to do so because of a thing's nature, condition or value.

Forfeiture of seized things

Clause 121 provides for the forfeiture to the State of a seized thing if the owner cannot reasonably be found or the thing cannot reasonably be returned after making reasonable efforts.

Dealing with forfeited things

Clause 122 provides for dealing with forfeited things that become the State's property.

Return of seized things

Clause 123 requires that a seized thing that has not been forfeited must be returned to its owner at the end of 6 months or if a proceeding for an offence involving it is commenced within 6 months, at the end of

proceedings and appeal from the proceedings. The thing unless it is forfeited must be returned to its owner immediately its continued retention as evidence ceases to be necessary.

Access to seized things

Clause 124 provides that unless it is impracticable or unreasonable to do so and unless the thing is forfeited, the owner of a thing must be allowed to inspect it and if it is a document, copy it.

Division 5 Other enforcement matters

Authorised officer may require record kept under s 66

Clause 125 provides for an authorised officer to require by notice production of records from an employer that are required to be kept under clause 66. A penalty is prescribed for failure to comply with specified obligations. The employer must comply unless they have a reasonable excuse. It is not a reasonable excuse that giving the records might tend to incriminate the employer.

False or misleading information

Clause 126 makes it an offence for a person to make a false or misleading statement. A penalty is prescribed for failure to comply with specified obligations.

False or misleading document

Clause 127 provides for dealing with a person who gives an authorised officer a document containing false or misleading information. A penalty is prescribed for failure to comply with specified obligations.

Obstructing authorised officers

Clause 128 requires a person not to obstruct an authorised officer in the exercise of a power, without reasonable excuse. A penalty is prescribed for failure to comply with specified obligations.

Impersonation of authorised officer

Clause 129 provides for dealing with a person who impersonates an authorised officer. A penalty is prescribed for failure to comply with specified obligations.

Notice of damage

Clause 130 makes provision for an authorised officer who damages property or a person under the direction of an authorised officer damages property to give written notice of the damage to the owner of the property.

Compensation

Clause 131 permits a person to claim compensation from the authority if the person incurs loss or expense due to the exercise of power.

Executive officers must ensure corporation complies with Act

Clause 132 stipulates the responsibility of executive officers of a company to ensure the company's compliance with this Act. Each of the company's executive officers will have committed an offence for any compliance failure. The offence is that of failing to ensure the corporation complies with its obligations under the act. Defences of acting diligently or not being in a condition to influence the conduct of the corporation are available to the officers. A penalty is prescribed for failure to comply with specified obligations.

Liability of directors for amounts

Clause 133 provides for any company liability to pay a penalty to be attached to each individual who was a director of the company when an offence was committed and when the penalty was imposed. This only applies when the penalty has not been paid within the prescribed time. It will assist compliance by acting as a deterrent and prevent business operators from circumventing their obligations under the act.

Holders of office to act honestly and with propriety

Clause 134 provides for the holders of office to act honestly and with propriety when exercising powers and includes board directors or persons otherwise performing work for the Authority. A penalty is prescribed for failure to comply with specified obligations.

Offence of improper disclosure of information

Clause 135 ensures that any person found directly or indirectly recording or disclosing information obtained in administering this Act, unless otherwise authorized or with the consent of the affected person, is committing an offence. A penalty is prescribed for failure to comply with specified obligations.

Subsection (e) provides for the Minister to authorise disclosure of information obtained in the administration of this Act. Such a provision will allow QLeave to share information e.g. industry participant and payroll data with other government agencies such as Workcover to facilitate compliance and other objectives of the Bill. The Minister has been provided with the express power to authorise a person to make such a disclosure.

Protection of person from dismissal

Clause 136 makes it an offence for an employer to dismiss a person merely because the person gave information under this Act to an officer of the Authority. A penalty is prescribed for failure to comply with specified obligations.

Part 10 Proceedings for offences

Proceedings for offences

Clause 137 stipulates the nature of proceedings for offences against this Act before an industrial magistrate and the timeframes for starting proceedings.

Powers of industrial magistrate

Clause 138 provides for the powers of an industrial magistrate as conferred under the *Industrial Relations Act 1999*.

Evidentiary certificates about returns

Clause 139 provides that an evidentiary certificate about returns signed by the General Manager is to be accepted as evidence of specified matters

stated in the certificate. This provision simplifies the process for proving matters maintained in formal records and is similar to provisions in many other pieces of legislation.

The content of the certificate may still be subject to challenge under the *Evidence Act 1997* and in that situation the necessary formal steps would be undertaken. Additionally, this process has time and cost saving advantages for the authority, the other party and the court.

Evidentiary certificates about levy payments

Clause 140 provides that a certificate signed by the General Manager about levy payments is evidence of the matter stated in the certificate. This provision simplifies the process for proving matters maintained in formal records and is similar to provisions in many other pieces of legislation.

The content of the certificate may still be subject to challenge under the *Evidence Act 1997* and in that situation the necessary formal steps would be undertaken. Additionally, this process has time and cost saving advantages for the authority, the other party and the court.

Other evidentiary certificates

Clause 141 provides for other evidentiary certificates signed by the General Manager are to be accepted as evidence of specified matters stated in the certificate. This provision simplifies the process for proving matters maintained in formal records and is similar to provisions in many other pieces of legislation.

The content of the certificate may still be subject to challenge under the *Evidence Act 1997* and in that situation the necessary formal steps would be undertaken. Additionally, this process has time and cost saving advantages for the authority, the other party and the court.

Other evidentiary provisions

Clause 142 allows for other evidentiary provisions to be used in a proceeding under this act regarding an appointment of and validity of signature of a person appointed under this Act and statements made in a complaint starting a proceeding.

Penalties to be paid to authority

Clause 143 provides for penalties to be paid to the Authority as a result of a proceeding for an offence against this Act.

Part 11 Miscellaneous

Arrangements with other States

Clause 144 provides for Minister to enter into an agreement to administer the law of another State about making long service leave payments to persons engaged in the contract cleaning industry in the other State. The matters that may be included in the agreement are detailed.

Declaration about arrangements with other States

Clause 145 provides for a regulation to declare that a State for which an agreement is in force, to be a reciprocating State or Territory and declare a law of that State to be a corresponding law for this Act.

General manager's power of delegation

Clause 146 permits the General Manager the power of delegation to an appropriately qualified member of the Building and Construction Authority's staff.

Protecting officials from liability

Clause 147 provides for the protection of officials from liability in cases where an act is done, or omission made, honestly and without negligence under this Act. The Contract Cleaning Industry (Portable Long Service Leave) Authority rather than an official will be held liable for any civil action that may ensue through the aforementioned.

This protection for officers is seen as essential for the proper administration of the Act as they will be able to undertake their duties secure in the knowledge that they will be able to do so fearlessly providing it is done in a proper way. However, this protection will not apply where the official acts in any way outside the bounds of the Act or other requirements such as a code of conduct.

Authority may indemnify person administering Act

Clause 148 provides for the authority to indemnify a person for the reasonable costs associated with defending a criminal proceeding if the person is found not guilty of the offence.

Approved forms

Clause 149 provides for the General Manager person to approve forms for use under this Act.

Regulation-making power

Clause 150 provides for the Governor in Council to make regulations under this Act and limits the maximum penalty which may be imposed for a breach of a regulation.

Part 12 Transitional Provision

Relationship with other Acts, awards etc

Clause 151 ensures that a right or entitlement that a registered worker has or may have under this Act does not limit the worker's entitlements under another Act, award or relevant industrial instrument.

Funds borrowed from Building and Construction Authority

Clause 152 provides for the Building and Construction Authority to provide initial funds where the Authority does not have sufficient funds to pay amounts due under this act. The Authority must repay the funds to the Building & Construction Authority along with any interest component within a set timeline as detailed in a mutual agreement. Regardless, these amounts must be repaid no later than 5 years from commencement.

Initial proposed budget for 2005-2006 financial year

Clause 153 ensures that the Authority give to the Minister before 1 August 2005, all details of its proposed budget for the remainder of the 2005-2006 financial year.

Registration as an employer if employer at commencement

Clause 154 stipulates that a person who is an employer at the commencement of the scheme or becomes an employer within 28 days of the commencement must register within 35 days of commencement. This will permit a more flexible timing for employers at the start of the scheme rather than the general time of 7 days provided for in clause 53.

Part 13 Consequential Amendment

Amendment of other Act

Clause 155 provides for Schedule 1 to amend the Act mentioned in it.

Schedule 1 Amendment of other Act

Schedule 1 provides for the insertion of ‘or the Contract Cleaning Industry (Portable Long Service Leave) Act 2005’ after ‘Act’ in section 32(2)(e) of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*. This allows the building and construction authority to make the necessary funds available for the scheme to commence operations.

Schedule 2 Dictionary

Schedule 2 provides for particular terms in the Act to be defined in a dictionary in the schedule to the Act.

In the Dictionary the definition of the term ‘premises’ is intended to include houses and buildings but not the ground surrounding a building or house or a swimming pool and the ground surrounding the swimming pool. Premises would not include planes, trains, boats and vehicles.