

Queensland



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

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(includes amendments up to Act No. 33 of 1999)**

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Information about this reprint

This Act is reprinted as at 12 November 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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INDUSTRY (PORTABLE LONG SERVICE
LEAVE) ACT 1991**

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

[as amended by all amendments that commenced on or before 12 November 1999]

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

PART 1—PRELIMINARY

Short title

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

Definitions

3. In this Act—

“**approved form**” means a form approved by the authority.

“**assessment manager**” has the meaning given by the *Integrated Planning Act 1997*.¹

¹ *Integrated Planning Act 1997*, section 3.17—

The “**assessment manager**”, for an application, is—

- (a) if the development is wholly within a local government’s area—the local government, unless a different entity is prescribed under a regulation; or
- (b) if paragraph (a) does not apply—
 - (i) the entity prescribed under a regulation; or
 - (ii) if no entity has been prescribed—the entity decided by the Minister.

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“authorised officer” means a person authorised under section 95(1).

“authority” means the Building and Construction Industry (Portable Long Service Leave) Authority.

“award” means—

- (a) an award under the *Industrial Relations Act 1999*; or
- (b) an award or AWA under the *Workplace Relations Act 1996* (Cwlth).

“board” means the authority’s board of directors.

“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 by-products 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

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- (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 authority's opinion, are farms); or
 - (xix) facilities that, in the authority's opinion, 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);
 - (ii) work involving structures, fixtures or other works for use on, in or in connection with anything mentioned in paragraph (a);
 - (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 industry award or agreement” means an award or industrial agreement applying to the building and construction industry.

“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.

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“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 91(1) to be a corresponding law for the purposes of this Act.

“eligible worker” see section 3A.

“employer” means a person who, by oral or written contract, engages an eligible worker to perform building and construction work.

“general manager” means the authority’s general manager.

“government entity” means—

- (a) a corporation incorporated under the Corporations Law all the stock or shares in the capital of which is or are beneficially owned by the State; or
- (b) a State instrumentality, agency, authority or entity; or
- (c) a department of government; or
- (d) an entity declared by regulation to be a government entity.

“industrial agreement” means an industrial agreement, QWA, certified agreement or EFA under the *Industrial Relations Act 1999*.

“levy” means long service leave levy.

“long service leave levy” means levy that is imposed under part 8, and includes an additional amount of levy under section 80 and any interest under section 84.

“long service leave payment” means payment that is required to be made under part 7.

“non-Queensland government entity” means—

- (a) a corporation incorporated under the Corporations Law all the stock or shares in the capital of which is or are beneficially owned by the Commonwealth or another State; or
- (b) an instrumentality, agency, authority or entity of the Commonwealth or another State; or
- (c) a department of government of the Commonwealth or another State; or

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(d) an entity established under an Act of the Commonwealth or another State and declared under a regulation to be a non-Queensland government entity.

“owner-builder permit” means an owner-builder permit under the *Queensland Building Services Authority Act 1991*.

“person” includes government entity and unincorporated body.

“private certifier” has the meaning given by the *Integrated Planning Act 1997*.²

“register of employers” means the register of employers kept by the authority under this Act.

“register of workers” means the register of workers kept by the authority under this Act.

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

“registered worker” means a worker whose name is in the register of workers.

“State” includes Territory.

“substantially engaged in the building and construction industry” has the meaning given by section 4.

“worker” means eligible worker.

“year’s service” means a year’s service within the meaning of section 51.

² *Integrated Planning Act 1997*, section 5.3.3—

A **“private certifier”** is an individual who—

- (a) has the qualifications, necessary experience or accreditation prescribed under a regulation under this or another Act for a certifier for a stated code; and
- (b) undertakes work by contractual arrangements with clients, either as an individual or through an entity employing the individual.

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Meaning of “eligible worker”

3A.(1) A person is an “eligible worker” if the person is an individual who, for the majority of the person’s ordinary hours of work, performs or usually performs building and construction work—

- (a) under a contract of employment for which a rate of pay is fixed by a building and construction industry award or agreement; or
- (b) under a subcontract to provide services of labour only that would, if performed under a contract of employment, be work for which a rate of pay is fixed by a building and construction industry award or agreement; or
- (c) under a contract of employment as a foreperson, subforeperson or like position directly supervising a person mentioned in paragraph (a) or (b).

(2) However, a person is not an “eligible worker” if—

- (a) a regulation declares that the person is not an eligible worker; or
- (b) the person is engaged under a contract of employment with—
 - (i) a local government; or
 - (ii) a government entity; or
 - (iii) a non-Queensland government entity; or
- (c) the person is engaged in a managerial, clerical, professional or ancillary capacity.

Meaning of “substantially engaged in the building and construction industry”

4. A person is “substantially engaged in the building and construction industry” if the person—

- (a) is ordinarily engaged in work in the building and construction industry as part of the person’s usual business activities; or
- (b) is ordinarily ready to perform, for reward, work in the building and construction industry.

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Act binds all persons

5. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

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

Division 1—Establishment of authority

Establishment of authority

6. The Building and Construction Industry (Portable Long Service Leave) Authority is established.

Legal status of authority

7.(1) The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

(2) The authority does not represent the State.

(3) The authority is an exempt public authority under the Corporations Law.

Authority may operate under trading name

8. The authority may operate under a trading name prescribed under the regulations.

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Division 2—Functions and powers of authority

Authority's functions

9.(1) The authority's primary functions are—

- (a) to provide an equitable and efficient system of portable long service leave for eligible workers in the building and construction industry; and
- (b) to provide funds for training for persons in the building and construction industry.

(2) The other functions of the authority are—

- (a) to provide educational and awareness programs to the building and construction industry to encourage worker membership and industry compliance with this Act; and
- (b) to give advice and make recommendations to the Minister on issues affecting the provision of long service leave in the industry and the operation of this Act; and
- (c) to perform other functions given to the authority under this or another Act; and
- (d) to perform functions incidental to its other functions; and
- (e) other functions prescribed under the regulations.

Authority's powers

10.(1) The authority has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) charge for, and fix conditions for the supply of, the goods, services and information it supplies; and
- (e) engage consultants; and

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(f) do anything else necessary or convenient to be done in performing its functions.

(2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.

(4) The authority may exercise its powers inside and outside Queensland.

(5) Without limiting subsection (4), the authority may exercise its powers outside Australia.

PART 3—OTHER PROVISIONS ABOUT THE AUTHORITY

The board

11. The authority has a board of directors.

Role of board

12. The board's role includes—

- (a) responsibility for the authority's commercial policy and management; and
- (b) ensuring, as far as possible, the authority achieves, and acts in accordance with, its corporate goals and carries out its corporate objectives outlined in its corporate plan; and
- (c) providing advice and recommendations to the Minister on issues affecting the provision of long service leave in the industry and the operation of this Act; and
- (d) ensuring the authority otherwise performs its functions in an appropriate, effective and efficient way.

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Composition of board

13. The board consists of the following 8 directors—

- (a) the chairperson;
- (b) the deputy chairperson who must have knowledge of, and experience in, financial affairs;
- (c) 3 directors representing employers in the building and construction industry;
- (d) 3 directors representing workers who perform building and construction work.

Appointment of directors

14. The directors are to be appointed by the Governor in Council.

Disqualification from board

15.(1) A person who—

- (a) is a patient within the meaning of the *Mental Health 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 director 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 director's being disqualified from being, or continuing as, a director of the board.

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Term of office

16.(1) A director 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 director of the board by industrial gazette notice.

Vacating office

17. The office of a director of the board becomes vacant if the director—

- (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 director; or
- (d) becomes disqualified as prescribed by section 15 from continuing as a director; or
- (e) is removed from office under section 16(2).

Casual vacancy

18.(1) When a vacancy happens in the office of a director 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 director mentioned in section 13(b), (c) or (d) must have the knowledge and experience required by section 13(b) or be representative as required by section 13(c) or (d), as the case may be.

(3) If the director 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.

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Board meetings

19.(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 director of the board appointed under section 13(c) and a director of the board appointed under section 13(d).

Procedure at meetings etc.

20.(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 directors, of whom—

(a) 1 is to be the chairperson or deputy chairperson of the board; and

(b) 1 is to be a director appointed under section 13(c); and

(c) 1 is to be a director appointed under section 13(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 directors present and voting on the business in question.

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

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

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(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 general manager.

Minutes

21.(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 directors.

(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

22.(1) The authority's seal is to be kept in the general manager's custody.

(2) The seal can be lawfully affixed to a document by the general manager only in pursuance of a resolution of the board.

(3) The general manager must affix the 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 authority's 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

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

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- (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 authority, in writing under the seal of the authority;
- (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 authority, in writing signed by any person acting under the express or implied authority of the authority;
- (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 authority, by any person acting under the express or implied authority of the authority.

Remuneration of directors

24.(1) A director of the board is to be paid such fees, remuneration and allowances in respect of the discharge of duties as a director 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 director of the board; or
- (b) accepting and retaining any fees, remuneration or allowances payable under this section.

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PART 4—ADMINISTRATION

Administration subject to Minister

25. Subject to the Minister, the authority is to administer this Act.

General manager and staff employed under Public Service Act

26. The general manager and staff of the authority are to be employed under the *Public Service Act 1996*.

Duties of general manager

27. The authority's general manager is, under its board, to manage the authority.

Things done by general manager

28. Anything done in the name of, or for, the authority by the general manager is taken to have been done by the authority.

General Manager's power of delegation

29. The general manager may delegate all or any of the general manager's powers to a member of the authority's staff.

Judicial notice of signatures

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

Use of services of public service employees

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

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(2) The amount of salaries, wages or allowances paid from the departmental accounts of the department under the *Financial Administration and Audit Act 1977*, section 12, to a public service employee who is engaged in the business of the authority under subsection (1) must be recouped to the departmental accounts to the extent that reflects the proportion of the working time of the public service employee spent in the business of the authority.

PART 5—FINANCIAL PROVISIONS

Funds of authority

32.(1) The funds of the authority consist of—

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

(2) Funds of the authority 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 authority; and
- (d) investments by the authority; and
- (e) any other payments authorised by this Act.

Funds for training

33.(1) Funds of the authority are also to be allocated for the training of persons in the building and construction industry.

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(2) The amount to be allocated for training is an amount equivalent to 0.05% of the cost of building and construction work used to calculate the levy for each financial year, other than that part of the cost attributable to any exemptions from the levy approved under sections 71, 78 and 79.³

(3) However, for working out the amount for the financial year ending 30 June 1999, the cost of work used to calculate the levy for the period 1 July 1998 to the commencement of this section is to be disregarded.

(4) The amount is to be paid by the authority as a grant to a building and construction industry training fund to be held in trust for the training by an entity prescribed under a regulation.

(5) The amount is to be paid to the entity in accordance with a regulation.

Proposed budget and progress budget reports

34.(1) The authority 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 authority 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

35.(1) The authority must investigate the sufficiency of the authority's funds and the adequacy of the rate of long service leave levy to be made—

- (a) as at 1 July 1995; and
- (b) afterwards, at intervals of not more than 2 years.

³ Sections 71 (Exemption from payment of levy), 78 (Building and construction work for public authority) and 79 (Voluntary performance of building and construction work)

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- (2) An investigation must be made by an actuary.
- (3) An actuary who makes an investigation—
- (a) must finish the investigation, and report the outcome of the investigation to the authority, as soon as practicable after the date at which the investigation is made; and
 - (b) must express in the report an opinion about whether any reduction or increase should be made in the rate of long service leave levy.
- (4) As soon as practicable after it receives the report, the authority must give the report to the Minister together with its recommendations on—
- (a) the opinion expressed by the actuary under subsection (3)(b); and
 - (b) whether the funds available are adequate to carry out the authority's functions.
- (5) This section does not limit the authority's ability to make other inquiries about the sufficiency of the authority's funds and the adequacy of the rate of long service leave levy.

Application of Finance Acts

36.(1) The authority is a statutory body within the meaning of the *Financial Administration and Audit Act 1977*.

(2) The authority is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

(3) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*, including, for example, section 10(4) and (5) of this Act.

PART 6—REGISTRATION AND SERVICE CREDITS

Division 1—Register of workers

Authority to keep register of workers

37.(1) The authority must keep a register of persons who are workers in the building and construction industry.

(2) The register must contain—

- (a) the names of all persons whose applications have been approved under section 39; and
- (b) the date on which each such person became a registered worker; 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 authority considers necessary for the purpose of administering this Act.

(3) The authority may, for the purposes of entering in the register of workers the particulars referred to in subsection (2)(c), rely on the information contained in a certificate of service furnished under section 47 or on such other information as the authority thinks fit.

Application for registration

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

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

(3) The authority, by written notice, may ask the applicant to give further information or documents relevant to the application.

(4) The authority may also ask the applicant to verify information or documents by statutory declaration.

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(5) The authority may refuse the application if the applicant fails to comply with the request without reasonable excuse.

Approval or refusal of application for registration

39.(1) The authority must consider each application made under section 38 and must—

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

(2) If the authority refuses the application, it must give the applicant reasons for the refusal.

(3) Subsection (1) does not require the authority to consider an application that it refuses under section 38(5).

Date of registration

40.(1) For the purposes of section 37(2)(b), the date on which an applicant becomes a registered worker is—

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

(2) The authority 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 38.

(3) The authority 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.

(4) The authority must not, in any case, fix a date earlier than—

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- (a) if the applicant is a person mentioned in section 3A(1)(a)⁴—1 July 1992; or
- (b) if the applicant is a person mentioned in section 3A(1)(b) or (c)—1 January 1999.

Cancellation of registration

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

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

(3) If the authority cancels the registration of a person as a registered worker, it must remove the name of the person from the register of workers—

- (a) as soon as practicable after 120 days from when the authority notifies the person of the cancellation; or
- (b) if an application for a reconsideration or an appeal under part 9 is lodged against the cancellation within that period—on the day the application or appeal is withdrawn or the cancellation is finally confirmed.

(3A) Despite subsections (1), (2) and (3), subsection (3B) applies if payment for long service leave is made to a person because the person makes an application under section 56 for an entitlement to long service leave under section 57(1B).

(3B) The authority must immediately—

- (a) cancel the registration of the person as a registered worker; and
- (b) notify the person of the cancellation; and
- (c) remove the person's name from the register of workers.

⁴ Section 3A (Meaning of “eligible worker”)

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

- (a) the person ceases to be a registered worker; 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 workers at the time of the removal.

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

Division 2—Register of employers

Authority to keep register of employers

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

Application for registration

43.(1) An employer in the building and construction industry (whether or not the employer carries on any other business) that engages workers must register as an employer under this division.

Maximum penalty—16 penalty units.

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

(3) The approved form may require an employer—

- (a) to state—
 - (i) each name under which the employer is, or has been, engaged in the building and construction industry; and
 - (ii) each business address of the employer; and

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(iii) each place in Queensland where books and records mentioned in section 92⁵ may be inspected during normal business hours; and

(b) to provide other information or produce documents that, in the authority's opinion, are relevant to the administration or enforcement of this Act.

(4) The authority may require an applicant to supply further stated information or documents to satisfy the authority the applicant is an employer in the building and construction industry who engages workers.

(5) The authority may require the applicant to verify information or documents by statutory declaration.

(6) The applicant must comply with a requirement under subsection (3), (4) or (5), unless the applicant has a reasonable excuse.

Maximum penalty for subsection (6)—16 penalty units.

Approval or refusal of application for registration

44.(1) The authority must consider each application made under section 43 and must—

(a) if satisfied that the applicant is an employer in the building and construction industry who engages workers—approve the application; or

(b) if not satisfied—refuse the application.

(2) If the authority refuses the application, it must give the applicant reasons for the refusal.

Employer to notify authority of any change in circumstance

45. An employer must give written notice to the authority of any change to information given to the authority under section 43(3) or (4) within 14 days of the change happening.

Maximum penalty—16 penalty units.

⁵ Section 92 deals with the keeping of books and records.

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Cancellation of registration

46. A registered employer that no longer engages workers may cancel the employer's registration under this division by giving written notice to the authority that the employer no longer engages workers.

Division 3—Service credits

Certificate of service to be supplied by employers

47.(1) An employer in the building and construction industry that engages a worker must—

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

Maximum penalty—16 penalty units.

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

Form and contents of certificate

48.(1) A certificate of service under section 47 must—

- (a) be in the approved form; and
- (b) state whether the worker was engaged by the employer for the whole of the period to which the certificate relates or, if engaged for only a part of the period, the period during which the worker was engaged; and
- (c) state whether the worker was engaged 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 worker in the performance of building and construction work; and

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- (d) contain such particulars of building and construction work performed by the worker 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 authority requires.

Exemptions

49.(1) An employer may apply to the authority for an exemption from the requirement to give a certificate of service under section 47 for a worker or class of workers.

(2) The authority may grant the exemption if the employer satisfies the authority—

- (a) the employer no longer engages the worker or class of workers;
or
- (b) the employer complies with, or makes contributions to, a similar scheme in another State about the payment of long service leave payments for the worker or class of workers.

(3) The authority may, by written notice to the employer, cancel an exemption granted under subsection (2) if it is satisfied the exemption should no longer be given.

(4) If the authority revokes the exemption, it must give the employer reasons for the revocation.

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Number of days' service

50.(1) Subject to sections 51, 52 and 54, if the authority is satisfied that a registered worker was engaged in the performance of building and construction work, the registered worker must be credited in the register of workers with the following number of days' service—

- (a) if the engagement was on a full-time basis only during a financial year—the number of days' service;
- (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 worker would have been credited, in the authority's opinion, had the engagement been on a full-time basis only.

(2) Subsection (1) does not apply if the work is performed under a contract for services other than a contract for labour only.

Year's service

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

Limitations on service credits

52.(1) Subject to section 54, a person must not be credited in the register of workers 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 40(1)(a) or (b), on which the person became a registered worker.

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

(3) If—

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- (a) in respect of a financial year a registered worker would, but for this subsection, be entitled to be credited in the register of workers 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 worker is to be credited in the register of workers kept under this Act must be adjusted so as to provide that the total period with which the worker 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 authority may decide.

(5) If payment for long service leave is made to a person because the person makes an application under section 56(1) or a corresponding law that corresponds to section 56(1), the person must not be credited in the register of workers with any day's service for building and construction work performed by the person during the period of long service leave.

(6) If payment for long service leave is made to a person because the person permanently stops, or intends to permanently stop, work in the building and construction industry, the person must not be credited in the register of workers with any day's service for building and construction work performed by the person during the year immediately after the day the person applies for payment.

(7) Subsection (6) does not apply if the payment is made under section 57(1B).

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Notice to registered workers of service credits

53. The authority 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 worker a notice—

- (a) specifying the number of days' service in the building and construction industry, as shown in the register of workers, with which that registered worker 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 worker has, in accordance with this division, been credited.

Retrospective service credits

54.(1) A registered worker, or person who applies to become a registered worker, may apply to the authority to be credited with retrospective service credits for the time he or she was engaged 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 worker 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 worker has an entitlement under subsection (3).

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(3) If a worker who is entitled to become a registered worker, as at the commencement of this part, has an entitlement to long service leave under the *Industrial Relations Act 1990*⁶ from an employer that is the employer of the worker as at the commencement, the liability for the entitlement remains with the employer.

(4) If—

- (a) the authority is satisfied with the information given in an application under subsection (1); and
- (b) the applicant is, or becomes, a registered worker;

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

Application for retrospective service credits

55.(1) An application under section 54(1) must be made—

- (a) within—
 - (i) 1 year from the commencement of this part; or
 - (ii) such longer period as the authority allows under subsection (3); and
- (b) in the approved form.

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

(3) The authority—

- (a) must not allow a period longer than 2 years after the commencement of this part; and
- (b) may allow a period longer than 1 year from the commencement of this part only if it considers that there are special circumstances in a particular case for so doing.

⁶ Now see *Acts Interpretation Act 1954*, s 14H and *Industrial Relations Act 1999*.

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

PART 7—LONG SERVICE LEAVE

Application for entitlement to long service leave

56.(1) A registered worker who has service credits in the register of workers may apply to the authority in the approved form for long service leave.

(2) The personal representative of a person who died having service credits in the register of workers may apply to the authority in the approved form for payment for the credits to which the person was entitled under section 57(1) immediately before his or her death.

Entitlement to long service leave

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

- (a) if the registered worker has accrued 10 years service in the register of workers—8.67 weeks; and
- (b) after 10 years service, leave accruing for each additional day's service recorded in the register at the rate that 8.67 weeks bears to 10 years.

(1A) Subsection (1B) applies if—

- (a) a registered worker has accrued at least 5 years but less than 10 years service; and
- (b) the worker has been credited with retrospective service credits under section 54; and
- (c) the worker—
 - (i) intends to permanently stop work in the building and construction industry; or

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(ii) dies.

(1B) The entitlement to long service leave is a period that bears to 8.67 weeks the proportion that the worker's service credits bear to 10 years service.

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

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

58. If a worker takes a period of long service leave mentioned in section 57(1)—

- (a) the employer of the worker immediately before the worker starts the leave must not—
 - (i) offer building and construction work to the worker; or
 - (ii) allow the worker to perform building and construction work; for the employer, during the period; and
- (b) the worker must not—
 - (i) request the employer to allow the worker 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—16 penalty units.

Amount of long service leave payment

59.(1) In this section—

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

“P” (pay) means the amount of ordinary pay for a normal working week that is, in the authority's opinion, payable to the registered worker.

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“relevant award or agreement” means the relevant building and construction industry award or agreement.

“S” (service) means the number of days’ service with which the registered worker for whom the application is made is credited in the register of workers—

- (a) on the day when the entitlement to long service leave payment first arose; or
- (b) if the worker or personal representative asks—on the day the application is filed with the authority.

(2) As soon as practicable after an application is made under section 57, the authority must pay to the applicant long service leave payment worked out under the following formula—

$$\text{LSLP} = \frac{\text{S}}{220} \times 0.867 \times \text{P.}$$

(3) Subsection (2) is subject to the following sections—

- section 57 (Entitlement to long service leave)
- section 60 (Long service leave payment not payable in certain cases).

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

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

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

(7) For the purpose of making long service leave payment at the higher rate, ordinary time at that rate is, subject to subsection (8), taken to be worked continuously by the worker during the period of long service leave.

(8) If, during the worker’s long service leave, the rate payable for ordinary time under the relevant award is—

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- (a) increased to a rate higher than the rate at which the worker is entitled to be paid—the worker 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 worker may be paid at the rate at which the worker 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.
- (9) If the authority is satisfied that—
- (a) a registered worker 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 worker before the worker starts the leave decreases or increases the rate at which the worker is usually paid;

the authority, 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

60. A registered worker is not entitled to be paid long service leave payment for any day’s service credited to the registered worker in the register of workers if long service leave payment or a payment under section 62 has been made for the day.

Election to take benefits under this Act or Industrial Relations Act

61.(1) A registered worker is not entitled to be credited under part 6, division 3 with service for a period of service as a worker in the building and construction industry if the worker has taken or received—

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- (a) a benefit for the period under part 12, division 3 of the *Industrial Relations Act 1990*⁷ or a law of another State or a Territory that corresponds to that division; or
- (b) a benefit for the period under the *Industrial Relations Act 1999*, chapter 2, part 3⁸ or a law of another State that corresponds to that part; or
- (c) 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 worker who—

- (a) in respect of a period of service as a worker 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 part 6, division 3 with any service that the worker had in the industry during a period by reference to which the leave was calculated.

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

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

⁷ Now see *Acts Interpretation Act 1954*, s 14H and *Industrial Relations Act 1999*.

⁸ *Industrial Relations Act 1999*, chapter 2 (General employment conditions), part 3 (Long service leave)

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for a period by reference to which the leave or benefit was calculated, is not entitled to a benefit under the *Industrial Relations Act 1999*, chapter 2, part 3 or a benefit in the nature of long service leave under a scheme to which an exemption granted to an employer under section 56⁹ 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

62.(1) Subject to subsection (4), if—

- (a) a person is provided with any benefits mentioned in section 61 for a period of service in the building and construction industry; and
- (b) the person—
 - (i) was, when those benefits were provided, a registered worker; or
 - (ii) is the personal representative of a person who, when the person died, was a registered worker;

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

$$EP = \frac{S}{220} \times 0.867 \times P.$$

(2) In subsection (1)—

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

“**P**” (pay) means the amount of ordinary pay in respect of a normal working week that is, in the opinion of the authority, payable to the registered worker.

⁹ *Industrial Relations Act 1999*, section 56 (Recognition of certain exemptions)

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“S” (service) means the number of days’ service with which the worker was credited in the register of workers immediately before the benefits accrued for the period during which the worker was engaged in the performance of building and construction work by the employer, other than as a person mentioned in section 3A(1)(b).¹⁰

(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 1 year after the benefits were provided) as the authority 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 61(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 a worker has been credited in the register of workers if long service leave payment or a payment under this section has been made in respect of the day.

(5) Despite section 41(1), an employer is entitled to be paid, for a registered worker whose name has been removed from the register of workers under section 41(1), any amount that the employer would have been entitled to be paid under this section if the name of that registered worker had not been removed from the register of workers.

(6) If—

- (a) a person is entitled to any benefits mentioned in section 61 for a period of service in the building and construction industry; and
- (b) the person—
 - (i) was, when those benefits arose, a registered worker; or
 - (ii) is the personal representative of a person who, when the person died, was a registered worker; and

¹⁰ Section 3A (Meaning of “eligible worker”)

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

the employer may pay to the authority 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 worker.

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

(8) Payment by an employer under subsection (6) is taken to be a compliance by the employer with the *Industrial Relations Act 1999*, section 46 or 49¹¹ (as the case requires) in respect of the value of the benefits the employer, in accordance with that section, is required to pay the worker.

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

63.(1) A person who is a registered worker may apply to the authority in the approved form for the payment by the authority 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

¹¹ *Industrial Relations Act 1999*, section 46 (Payment for long service leave) or 49 (Payment for long service leave)

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- (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 57.

(2) If a deceased registered worker was, immediately before the worker's death, entitled to apply for long service leave payment under subsection (1), the personal representative of the worker may apply to the authority 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 authority 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 56 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 authority makes a payment under this section, the authority 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 authority to make long service leave payment to that person is discharged; and
- (b) the authority must, as soon as practicable after being notified of the payment and if satisfied that the payment was properly made, reimburse the corresponding authority.

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(7) The payment of an amount by the authority under subsection (6) is to be made in accordance with such terms (if any) as are specified in the agreement entered into under section 90 with respect to the State or Territory in which the relevant corresponding authority is established.

Authority's liability confined to long service leave

64. The authority is not taken to be—

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

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

Payment when due

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

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

PART 8—LONG SERVICE LEAVE LEVY

Imposition of levy

66. Long service leave levy is imposed on building and construction work.

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Notification of building and construction work

67.(1) If building and construction work is to be carried out, an approved form must be filed with the authority or its agent by or for the person for whom the work is to be done.

Maximum penalty—16 penalty units.

(2) However, the form need not be filed if levy is not payable because of section 70(2)(a).

Offence for failure to pay levy

68. A person liable to pay levy and not fully exempt from payment under section 71 must pay to the authority or its agent the amount of levy at or before the time for its payment.

Maximum penalty—16 penalty units.

Power of authority to decide day when building and construction work starts and ends

69. For the purposes of this part, the authority may decide the day on which building and construction work starts and the day on which it ends.

No levy for certain building and construction work

70.(1) Levy is not payable for building and construction work if the work started before 1 July 1992.

(2) Also, a regulation may provide that levy is not payable for—

- (a) specified building and construction work; or
- (b) a specified part of specified building and construction work.

Exemption from payment of levy

71.(1) A person carrying out work under an owner-builder permit is exempt from payment of levy on all work carried out under the permit.

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(2) The authority may exempt a person who is not substantially engaged in the building and construction industry from payment of levy for building and construction work, or part of the work, that the authority is satisfied is carried out for the person by the person or the person's workers.

Rate of levy

72.(1) The amount of the levy for building and construction work is the percentage prescribed by regulation of the cost of the work.

(2) An amount calculated under subsection (1) is to be rounded to the nearest dollar (with 50c to be rounded downwards).

Meaning of “cost of building and construction work”

73.(1) The “cost of building and construction work” is—

- (a) the contract price for the work; or
- (b) if the work is being done for someone other than the Commonwealth and involves more than 1 contract—the total of the contract prices; or
- (c) if there is no contract price—the cost of the work as decided by the authority.

(2) Despite subsection (1)(a) and (b), if the authority is satisfied that the contract price, or the total of the contract prices, for carrying out building and construction work is not an accurate estimate of the cost of the work, the cost may be decided by the authority.

Liability for levy

74. Levy for building and construction work must be paid by—

- (a) if the work is being done for the Commonwealth—the contractor engaged by the Commonwealth to carry out the work; or
- (b) if paragraph (a) does not apply and under the *Integrated Planning Act 1997* an application is made to the assessment manager for development approval of building work under that Act—the applicant; or

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- (c) if paragraphs (a) and (b) do not apply—the person for whom the work is to be done.

When levy is payable

75.(1) Levy for building and construction work to be carried out by a person (other than a government entity) must be paid—

- (a) before an application is made under the *Integrated Planning Act 1997* to the assessment manager for development approval of building work under that Act; or
- (b) if application is not made under that Act for approval of the work—before the work is started or, if the authority allows a later time for payment, that time.

(2) Levy for building and construction work to be carried out by a government entity must be paid before the time, after the start of the work, decided by the authority.

Government entity to notify of building and construction work

76.(1) A government entity must notify the authority of building and construction work the entity carries out, or causes to be carried out, within 3 months of the start of the work.

(2) Subsection (1) applies only if the cost of the work is not less than the cost prescribed by regulation.

(3) Subsection (1) is in addition to section 80(2).

Duty of assessment manager to sight approved form

77.(1) The assessment manager may, under the *Integrated Planning Act 1997*, accept a development application for building work under that Act only if the assessment manager has seen an approved form issued by the authority signifying, for the work—

- (a) payment of levy; or
- (b) payment of the first instalment of levy; or

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- (c) an exemption from payment of levy; or
- (d) an exemption from immediate payment of levy.

(2) A local government is entitled to be paid remuneration by the authority for carrying out its duty under this section at the rate prescribed by regulation.

(3) A private certifier who is acting as an assessment manager must not contravene subsection (1).

Maximum penalty—16 penalty units.

(4) Subsections (1) and (3) do not apply to an application about building and construction work if no levy is payable for the work under section 70(2).

Building and construction work for public authority

78. If the authority is satisfied that—

- (a) building and construction work is to be carried out for—
 - (i) a local government; or
 - (ii) a government entity; or
 - (iii) a non-Queensland government entity; 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 government, government entity or the non-Queensland government entity;

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

79.(1) Levy is not payable for the voluntary component of building and construction work to be carried out by or for an entity that, in the authority's opinion, is a nonprofit organisation.

(2) In this section—

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“nonprofit organisation” means an entity formed, or carried on, for a purpose other than pecuniary gain to its members.

“voluntary component” means the cost, in the authority’s opinion, attributable to voluntary labour and donated building materials.

Additional provisions about levy

80.(1) Subsection (2) applies if the authority believes, on reasonable grounds, that a person is liable to pay levy for building and construction work.

(2) The authority may, by written notice, require the person to give the authority the information and documents about the work, including the actual cost of carrying out the work, asked for in the notice within the reasonable time stated in the notice.

(3) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—16 penalty units.

(4) If—

- (a) the levy payable for the actual cost of carrying out the work is more than the levy that has been paid for the work; and
- (b) the difference between the cost of the work for which levy has been paid and the cost of the work for which levy is payable is more than the amount prescribed under the regulations;

the person must pay the additional levy to the authority without delay.

Maximum penalty—16 penalty units.

(5) Payment of additional levy may be claimed and ordered in a proceeding for—

- (a) recovery of the additional levy brought in a court of competent jurisdiction; or
- (b) an offence against subsection (4) brought against the person liable to pay the additional levy.

(6) The additional levy must be worked out under the regulations.

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Refunds of levy

81.(1) A person who 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 authority is satisfied that the building and construction work is not to be carried out.

(2) If it appears to the authority 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 authority is less than the cost of the building and construction work as last determined by the authority; and
- (c) the difference between those costs is more than the prescribed amount;

the authority, on application in the approved form, is to refund to the person who 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 1 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 1 year after finish of the building and construction work.

Payment of levy by instalments

82.(1) Despite section 75,¹² the person liable to pay long service leave levy may pay the levy by instalments under this section if—

- (a) the cost of the building and construction work is more than an amount prescribed under the regulations; and

¹² Section 75 deals with when levy is payable.

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(b) the time reasonably needed to perform the work is longer than 1 year.

(2) The first instalment must not be less than the levy that would be payable for building and construction work costing the amount prescribed by regulation under subsection (1)(a).

(3) Each subsequent instalment of levy for the work is the amount decided by the authority and notified to the person liable to pay the levy.

(4) An instalment is payable—

(a) if it is the first instalment—before the time the levy would be payable if it were not payable by instalments; and

(b) for other instalments—at the times before the finish of the building and construction work decided by the authority and notified to the person.

(5) If a person pays long service leave levy by instalments, an instalment of long service leave levy that is not payable—

(a) is not recoverable by the authority; and

(b) does not bear interest under section 84.

(6) If a person fails to pay an instalment of long service leave levy at or before the time for its payment—

(a) the total amount of instalments unpaid on that date becomes payable to, and recoverable by, the authority; and

(b) section 84 applies in respect of the unpaid balance of the long service leave levy;

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

(7) The authority may accept the payment of an instalment of long service leave levy that is made after the time for its payment.

(8) For the purposes of this section, an instalment mentioned in subsection (7) is, if the authority so directs, taken to have been paid at the time for its payment.

Appointment of agents for collection of levy

83.(1) The authority 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

84.(1) An amount due in respect of long service leave levy and not paid at or before the time 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) The authority may, in special circumstances, direct that—

- (a)** the time for payment of long service leave levy be changed to a later stated time; or
- (b)** levy be payable in instalments of amounts, and at intervals, decided by the authority; or
- (c)** the amount of any interest payable under subsection (1) be waived or reduced by a stated amount.

(4) Subsection (3) applies despite the following sections—

- section 75 (When levy is payable)
- section 80 (Additional provisions about levy)
- section 82 (Payment of levy by instalments).

Recovery of levy

85.(1) Levy that has become payable to the authority is a debt payable to it.

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

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(3) If it appears to the authority that—

- (a) building and construction work is being, or has been, carried out; and
- (b) a person 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 authority may make an assessment of the amount of long service leave levy that is due by that person in respect of the building and construction work.

(4) The authority is to cause notice of any such assessment to be served on the person to whom the assessment relates.

Penalties no relief from levy

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

PART 9—APPEALS

Reconsideration by authority

87.(1) A person who is dissatisfied with—

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

may—

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- (c) within 45 days after the decision, determination, direction or notice is given to the person; or
- (d) within a longer period prescribed under the regulations; or
- (e) in relation to the register of workers—at any time;

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

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

(3) If the authority, 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

88.(1) A person mentioned in section 87(1) may appeal to an industrial magistrate—

- (a) instead of taking action under that section; or
- (b) if dissatisfied with a decision of the authority under section 87(2).

(2) An appeal to an industrial magistrate about a decision, determination, direction or notice made or given by the authority, or the accuracy of a notice given to a person under this Act, must be started—

- (a) if action is not taken under section 87(1)¹³—within the period prescribed under section 87(1)(c) or (d); or
- (b) if action is taken under section 87(1)—within 28 days after notice of the authority’s decision under section 87(2) is given to the person.

(3) A regulation may provide for—

- (a) the way an appeal to an industrial magistrate may be started and conducted; and

¹³ Section 87(1) allows a person to ask the authority to give further consideration to certain matters.

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(b) the powers of an industrial magistrate to summon witnesses and documents.

(4) In deciding an appeal, the industrial magistrate may—

(a) confirm the decision appealed against; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the matter to the authority with directions the industrial magistrate considers appropriate.

(5) In substituting another decision, the industrial magistrate has the same powers as the authority.

(6) If the industrial magistrate substitutes another decision, the substituted decision is taken, for this Act, to be the authority's decision.

(7) The industrial magistrate may make an order about costs the magistrate considers just.

Appeal from industrial magistrate to Industrial Court

89.(1) If the authority or a person is dissatisfied with a decision of an industrial magistrate in an appeal under section 88, the authority or person 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 10—MISCELLANEOUS

Arrangements with other States and with Territories

90.(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).

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(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 authority and any authority established in the other State or the Territory concerned that has functions similar to those of the authority; 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

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

- (a) declare a State or Territory in relation to which an agreement under section 90 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.

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Keeping, and inspection, of books and records

92.(1) A person who engages workers to perform building and construction work must keep the books and records about workers prescribed under the regulations.

(2) The regulations may prescribe the particulars about workers the books and records must contain.

(3) The person must—

- (a)** preserve each book and record for at least 6 years after the last entry is made in it; and
- (b)** make available for inspection by an authorised officer, or produce to the authorised officer for inspection, the books and records at a reasonable time and place nominated by an authorised officer; and
- (c)** permit the authorised officer to make a copy of a book or record.

Maximum penalty—16 penalty units.

(4) A requirement under subsection (3)(b) may be made orally, but must be confirmed in writing as soon as practicable.

Conflict of interest

93.(1) If a director 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 director's discretion or the proper performance of the director's duty in respect of a matter under this Act, the director 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 director of the board who has such an interest to take specified action with a view to resolving the possible conflict.

(3) A director 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 director.

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Holders of office to act honestly and with propriety

94.(1) This section applies to—

- (a) a director of the board; and
- (b) other persons who perform work on behalf of the authority.

(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 authority.

(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 authority.

Maximum penalty—40 penalty units.

Authorised officers

95.(1) The Minister or general 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 general 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 general manager.

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

Maximum penalty for this subsection—16 penalty units.

Authorised officer to produce identity card

96. An authorised officer is not entitled to exercise powers under section 97, 98, 99, 100 or 101 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

97.(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 99.

(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 100 authorises the entry or exercise of the power.

Entry and search—evidence of offences

98.(1) Subject to subsection (3), if an authorised officer has reasonable grounds for suspecting that there is in a place a particular thing (“**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 99.

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(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 101 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 101, 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

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- (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

99.(1) The powers an authorised officer may exercise under section 97(1)(b) or 98(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 any persons, equipment and materials the authorised officer reasonably requires to exercise 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) to (d).

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

Maximum penalty—16 penalty units.

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(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

100.(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 99; 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.

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Offence related warrant

101.(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 (“**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 99; 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

102. 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

103. 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

104.(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 director of the board; or
- (b) a person performing work on behalf of the authority.

“produce” includes permit access to.

“protected document” means a document that—

- (a) contains information that concerns a person; and

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- (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; 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;

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.

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Proceedings for offences

105.(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 must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Certain persons liable for offences by unincorporated bodies

106.(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 85.

(4) Before instituting a proceeding against a person under subsection (3), the authority must cause a copy of the notice mentioned in section 85(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—

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Long Service Leave) Act 1991*

- (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.

Powers of industrial magistrate

107. For this Act, an industrial magistrate has all the powers conferred on an industrial magistrate under the *Industrial Relations Act 1999*, as far as the powers are appropriate for issues to be decided under this Act.

Evidentiary provisions

108.(1) This section applies to a proceeding under this Act or another Act prescribed under the regulations.

(2) The appointment of a director of the authority or a person appointed under this Act and the authority of the chairperson of the authority, or another person appointed under this Act, to do anything under this Act must be presumed unless a party, by reasonable notice, requires proof of the appointment or authority.

(3) A signature purporting to be the signature of the chairperson or other appointed person is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the general manager stating any of the following matters is evidence of the matter—

- (a) a stated document is—
 - (i) an appointment or approval or a copy of an appointment or approval; or
 - (ii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
- (b) on a stated day, a stated person was or was not listed in the register of employers or the register of workers;

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- (c) on a stated day, an application for registration as an employer under section 43¹⁴ had, or had not, been received by the authority;
- (d) on a stated day, a certificate of service under section 47(1)(a) or (b)¹⁵ had, or had not, been received by the authority;
- (e) on a stated day, a stated direction was made or given by the authority.

(5) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Certificate as to payment of levy

109. A certificate that appears to be signed by the general 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 authority or an authorised agent of the authority; 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

110. The authority 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

¹⁴ Section 43 (Application for registration)

¹⁵ Section 47 (Certificate of service to be supplied by employers)

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

Protection of worker from dismissal

111. An employer must not dismiss a person engaged by the employer, merely because the person has given information under this Act to an officer of the authority.

Maximum penalty—16 penalty units.

Regulations

112.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may provide that contravention of a regulation is an offence and prescribe a maximum penalty, of not more than 16 penalty units, for the offence.

PART 11—TRANSITIONAL

*Division 1—Transitional provision for Building and Construction
Industry (Portable Long Service Leave) Amendment Act 1994*

References to board

116. A reference at the commencement in an Act or instrument or other document to the Building and Construction Industry (Portable Long Service Leave) Board is taken to be a reference to the Building and Construction Industry (Portable Long Service Leave) Authority.

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

*Division 2—Transitional provisions for Building and Construction
Industry (Portable Long Service Leave) Amendment Act 1998*

Register of employees

117. From the commencement of this section, a reference in a document to the register of employees is taken, if the context permits, to be a reference to the register of workers.

Registered employees

118. A person who immediately before the commencement of this section was a registered employee is taken to be a registered worker from the commencement.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 November 1999. Future amendments of the Building and Construction Industry (Portable Long Service Leave) Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 July 1992
2	to Act No. 66 of 1993	25 March 1994
3	to Act No. 65 of 1994	25 January 1995
3A	to Act No. 57 of 1995	29 July 1996
3B	to Act No. 54 of 1996	13 January 1997
3C	to Act No. 21 of 1997	13 June 1997
3D	to Act No. 13 of 1998	3 July 1998
4	to Act No. 44 of 1998	8 January 1999

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Renumbered provisions	2, 3

6 List of legislation

Building and Construction Industry (Portable Long Service Leave) Act 1991 No. 90

date of assent 11 December 1991

ss 1–2 commenced on date of assent

pt 1 (except ss 1–2), pts 3–5, 9–10 commenced 8 February 1992 (1992 SL No. 6)

pt 6 (except s 53), pts 7–8 commenced 1 July 1992 (1992 SL No. 104)

remaining provisions commenced 1 January 1993 (1992 SL No. 111)

as amended by—

Building and Construction Industry (Portable Long Service Leave) Amendment Act 1993 No. 66

date of assent 23 November 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1994 (see s 2)

Building and Construction Industry (Portable Long Service Leave) Amendment Act 1994 No. 65

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1995 (see s 2)

Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch

date of assent 22 November 1995

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

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Long Service Leave) Act 1991*

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Superannuation and Other Legislation Amendment Act 1997 No. 21 pts 1, 5

date of assent 15 May 1997
ss 1–2 commenced on date of assent
remaining provisions commenced 27 March 1997 (see s 2(2))

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 3

date of assent 23 March 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 30 April 1998 (1998 SL No. 55)

Building and Construction Industry (Portable Long Service Leave) Amendment Act 1998 No. 44

date of assent 27 November 1998
ss 1–4, 7 (except for ins s 9(1)(a)), 8 commenced on date of assent (see s 2(1))
remaining provisions commenced 1 January 1999 (see s 2(2))

Financial Administration Legislation Amendment Act 1999 No. 29 ss 1–2, 50 sch

date of assent 16 June 1999
ss 1–2, 50 commenced on date of assent
remaining provisions commenced 1 July 1999 (1999 SL No. 122 and see 1999 SL No. 119, 1999 SL No. 70 s 2(3))

Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3

date of assent 18 June 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1999 (1999 SL No. 159)

7 List of annotations

This reprint has been renumbered. See table of renumbered provisions in endnote 8.

Title

amd 1998 No. 44 s 4

Commencement

s 2 om 1998 No. 13 s 30

Definitions

prov hdg sub 1998 No. 13 s 31(1)

s 3 def “**approved form**” sub 1994 No. 65 s 4(1)–(2)

def “**assessment manager**” ins 1998 No. 13 s 31(2)

def “**authority**” ins 1994 No. 65 s 4(2)

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

- def **“award”** sub 1994 No. 65 s 4(1)–(2); 1997 No. 21 s 35
amd 1999 No. 33 s 747 sch 3
- def **“board”** sub 1994 No. 65 s 4(1)–(2)
- def **“building and construction industry”** amd 1993 No. 66 s 3 sch;
1994 No. 65 s 4(3)
- def **“building and construction industry award or agreement”** ins
1994 No. 65 s 4(2)
- def **“eligible worker”** ins 1998 No. 44 s 5(2)
- def **“employee”** amd 1993 No. 66 s 4(2)
sub 1994 No. 65 s 4(1)–(2)
om 1998 No. 44 s 5(1)
- def **“employer”** ins 1998 No. 44 s 5(2)
- def **“general manager”** ins 1994 No. 65 s 4(2)
- def **“government entity”** ins 1993 No. 66 s 4(1)
amd 1998 No. 44 s 5(3)
- def **“industrial agreement”** ins 1994 No. 65 s 4(2)
sub 1997 No. 21 s 35
amd 1999 No. 33 s 747 sch 3
- def **“Local Authority”** om 1993 No. 66 s 3 sch
- def **“Manager”** om 1994 No. 65 s 4(1)
- def **“non-Queensland government entity”** ins 1998 No. 44 s 5(2)
- def **“owner-builder permit”** ins 1993 No. 66 s 4(1)
- def **“person”** ins 1993 No. 66 s 4(1)
- def **“private certifier”** ins 1998 No. 13 s 31(2)
- def **“public sector employee”** om 1996 No. 37 s 147 sch 2
- def **“register of employees”** sub 1994 No. 65 s 4(1)–(2)
om 1998 No. 44 s 5(1)
- def **“register of employers”** sub 1994 No. 65 s 4(1)–(2)
- def **“register of workers”** ins 1998 No. 44 s 5(2)
- def **“registered employee”** om 1998 No. 44 s 5(1)
- def **“registered worker”** ins 1998 No. 44 s 5(2)
- def **“State”** ins 1994 No. 65 s 4(2)
- def **“substantially engaged in the building and construction industry”**
ins 1993 No. 66 s 4(1)
- def **“worker”** ins 1998 No. 44 s 5(2)

Meaning of “eligible worker”

s 3A ins 1998 No. 44 s 6

Meaning of “substantially engaged in the building and construction industry”

s 4 ins 1993 No. 66 s 5

Act binds all persons

s 5 sub 1994 No. 65 s 5

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

pt hdg ins 1994 No. 65 s 6

Division 1—Establishment of authority

div 1 (ss 6–8) ins 1994 No. 65 s 6

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

Division 2—Functions and powers of authority

div hdg ins 1994 No. 65 s 6

Authority's functions

s 9 ins 1994 No. 65 s 6
amd 1998 No. 44 ss 7, 3 sch

Authority's powers

s 10 ins 1994 No. 65 s 6
amd 1996 No. 54 s 9 sch

PART 3—OTHER PROVISIONS ABOUT THE AUTHORITY

pt hdg sub 1994 No. 65 s 7

The board

s 11 sub 1994 No. 65 s 8

Role of board

s 12 sub 1994 No. 65 s 8

Composition of board

s 13 sub 1994 No. 65 s 8
amd 1998 No. 44 s 3 sch

Appointment of directors

s 14 sub 1994 No. 65 s 8

Disqualification from board

prov hdg sub 1994 No. 65 s 3 sch
s 15 amd 1994 No. 65 s 3 sch

Term of office

s 16 amd 1994 No. 65 s 3 sch

Vacating office

s 17 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch

Casual vacancy

s 18 prev s 18 om 1994 No. 65 s 9
pres s 18 amd 1994 No. 65 s 3 sch

Board meetings

s 19 prev s 19 om 1993 No. 66 s 3 sch
pres s 19 amd 1994 No. 65 s 3 sch

Procedure at meetings etc.

s 20 amd 1994 No. 65 s 3 sch

Minutes

s 21 amd 1994 No. 65 s 3 sch

Custody and affixing of seal

s 22 amd 1994 No. 65 s 3 sch

Execution of contracts and agreements

s 23 amd 1994 No. 65 s 3 sch

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

Remuneration of directors

prov hdg amd 1994 No. 65 s 3 sch

s 24 amd 1994 No. 65 s 3 sch

Administration subject to Minister

s 25 amd 1994 No. 65 s 3 sch

General manager and staff employed under Public Service Act

s 26 amd 1994 No. 65 s 3 sch

sub 1996 No. 37 s 147 sch 2

Duties of general manager

s 27 sub 1994 No. 65 s 10

Things done by general manager

s 28 ins 1994 No. 65 s 10

General Manager's power of delegation

prov hdg amd 1995 No. 57 s 4 sch 2

s 29 amd 1994 No. 65 s 3 sch; 1995 No. 57 s 4 sch 2

Judicial notice of signatures

s 30 amd 1994 No. 65 s 3 sch

Use of services of public service employees

prov hdg amd 1996 No. 37 s 147 sch 2

s 31 amd 1994 No. 65 s 3 sch; 1996 No. 37 s 147 sch 2; 1999 No. 29 s 50 sch

Funds of authority

prov hdg amd 1994 No. 65 s 3 sch

s 32 amd 1994 No. 65 s 3 sch

Funds for training

s 33 prev s 33 ins 1994 No. 65 s 11

om 1996 No. 54 s 9 sch

pres s 33 ins 1998 No. 44 s 8

Proposed budget and progress budget reports

s 34 amd 1994 No. 65 s 3 sch

Actuarial investigation of funds

s 35 sub 1994 No. 65 s 12

Application of Finance Acts

s 36 ins 1994 No. 65 s 12

amd 1996 No. 54 s 9 sch

PART 6—REGISTRATION AND SERVICE CREDITS**Division 1—Register of workers**

div hdg amd 1998 No. 44 s 3 sch

Authority to keep register of employees

prov hdg amd 1994 No. 65 s 3 sch

s 37 amd 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

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

Application for registration

s 38 amd 1994 No. 65 s 13; 1998 No. 44 s 3 sch

Approval or refusal of application for registration

s 39 prev s 39 om 1994 No. 65 s 17
pres s 39 amd 1994 No. 65 s 14; 1998 No. 44 s 3 sch

Date of registration

s 40 amd 1994 No. 65 s 15, 3 sch; 1998 No. 44 ss 9, 3 sch

Cancellation of registration

s 41 amd 1994 No. 65 s 3 sch; 1998 No. 44 ss 10, 3 sch

Authority to keep register of employers

prov hdg amd 1994 No. 65 s 3 sch

s 42 amd 1994 No. 65 s 3 sch

Application for registration

s 43 amd 1993 No. 66 s 3 sch; 1994 No. 65 ss 16, 3 sch; 1998 No. 44 s 3 sch

Approval or refusal of application for registration

s 44 amd 1993 No. 66 s 3 sch
sub 1994 No. 65 s 17
amd 1998 No. 44 s 3 sch

Employer to notify authority of any change in circumstance

s 45 sub 1994 No. 65 s 17

Cancellation of registration

s 46 amd 1994 No. 65 s 3 sch; 1995 No. 57 s 4 sch 2; 1998 No. 44 s 3 sch

Certificate of service to be supplied by employers

s 47 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

Form and contents of certificate

s 48 amd 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

Exemptions

s 49 sub 1994 No. 65 s 18
amd 1998 No. 44 s 3 sch

Number of days' service

s 50 amd 1994 No. 65 s 3 sch; 1998 No. 44 ss 11, 3 sch

Year's service

s 51 amd 1998 No. 44 s 3 sch

Limitations on service credits

s 52 amd 1994 No. 65 s 3 sch; 1998 No. 44 ss 12, 3 sch

Notice to registered employees of service credits

s 53 amd 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

Retrospective service credits

s 54 amd 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

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Long Service Leave) Act 1991*

Application for retrospective service credits

s 55 amd 1994 No. 65 s 3 sch

Application for entitlement to long service leave

s 56 amd 1994 No. 65 s 3 sch; 1998 No. 44 ss 13, 3 sch

Entitlement to long service leave

s 57 amd 1998 No. 44 s 14

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

prov hdg amd 1998 No. 44 s 3 sch

s 58 amd 1993 No. 66 s 3 sch; 1998 No. 44 s 3 sch

Amount of long service leave payment

s 59 amd 1994 No. 65 s 19, 3 sch; 1998 No. 44 ss 15, 3 sch

Long service leave payment not payable in certain cases

s 60 amd 1994 No. 65 s 3 sch; 1998 No. 44 ss 16, 3 sch

Election to take benefits under this Act or Industrial Relations Act

prov hdg amd 1997 No. 21 s 36(1); 1999 No. 33 s 747 sch 3

s 61 amd 1993 No. 66 s 3 sch; 1997 No. 21 s 36(2)–(4); 1998 No. 44 s 3 sch;
1999 No. 33 s 747 sch 3

Payments to employers

s 62 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch; 1997 No. 21 s 37; 1998
No. 44 ss 17, 3 sch; 1999 No. 33 s 747 sch 3

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

s 63 amd 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

Authority's liability confined to long service leave

prov hdg amd 1994 No. 65 s 3 sch

s 64 amd 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

Payment when due

s 65 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch

Imposition of levy

s 66 sub 1993 No. 66 s 6

Notification of building and construction work

s 67 ins 1994 No. 65 s 20

Offence for failure to pay levy

s 68 prev s 68 amd 1993 No. 66 ss 8, 3 sch

om 1994 No. 65 s 25

pres s 68 ins 1994 No. 65 s 20

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Long Service Leave) Act 1991*

Power of authority to decide day when building and construction work starts and ends

prov hdg amd 1994 No. 65 s 3 sch
s 69 prev s 69 sub 1993 No. 66 s 6
om 1993 No. 66 s 9
pres s 69 amd 1994 No. 65 s 3 sch

No levy for certain building and construction work

s 70 sub 1993 No. 66 s 6; 1994 No. 65 s 21

Exemption from payment of levy

s 71 sub 1993 No. 66 s 6; 1994 No. 65 s 21
amd 1998 No. 44 s 3 sch

Rate of levy

s 72 sub 1993 No. 66 s 6

Meaning of “cost of building and construction work”

s 73 sub 1993 No. 66 s 6; 1994 No. 65 s 22

Liability for levy

s 74 ins 1993 No. 66 s 6
sub 1994 No. 65 s 22
amd 1998 No. 13 s 32

When levy is payable

s 75 ins 1993 No. 66 s 6
amd 1994 No. 65 s 3 sch; 1998 No. 13 s 33

Government entity to notify of building and construction work

s 76 ins 1993 No. 66 s 6
amd 1994 No. 65 s 3 sch

Duty of assessment manager to sight approved form

prov hdg sub 1998 No. 13 s 34(1)
s 77 ins 1993 No. 66 s 6
amd 1994 No. 65 s 23; 1994 No. 65 s 3 sch; 1998 No. 13 s 34(2–5)

Building and construction work for public authority

s 78 amd 1993 No. 66 s 7; 1994 No. 65 s 3 sch; 1998 No. 44 s 18

Voluntary performance of building and construction work

s 79 def “**voluntary component**” amd 1993 No. 66 s 3 sch
sub 1994 No. 65 s 24

Additional provisions about levy

s 80 amd 1993 No. 66 s 3 sch
sub 1994 No. 65 s 26

Refunds of levy

s 81 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch

Payment of levy by instalments

s 82 amd 1993 No. 66 ss 10, 3 sch; 1994 No. 65 ss 27, 3 sch

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

Appointment of agents for collection of levy

s 83 amd 1994 No. 65 s 3 sch

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

s 84 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 28

Recovery of levy

s 85 amd 1993 No. 66 s 3 Sch; 1994 No. 65 ss 29, 3 sch

Penalties no relief from levy

s 86 amd 1993 No. 66 s 3 sch

Reconsideration by authority

prov hdg amd 1994 No. 65 s 3 sch

s 87 amd 1993 No. 66 s 3 sch; 1994 No. 65 ss 30, 3 sch; 1998 No. 44 s 3 sch

Appeal to industrial magistrate

s 88 amd 1993 No. 66 s 3 sch

 sub 1994 No. 65 s 31

 amd 1995 No. 50 s 3 sch

Appeal from industrial magistrate to Industrial Court

s 89 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch

Arrangements with other States and with Territories

s 90 amd 1994 No. 65 s 3 sch

Keeping, and inspection, of books and records

s 92 amd 1993 No. 66 s 3 sch

 sub 1994 No. 65 s 32

 amd 1998 No. 44 s 3 sch

Conflict of interest

s 93 amd 1994 No. 65 s 3 sch

Holders of office to act honestly and with propriety

s 94 amd 1994 No. 65 s 3 sch

Authorised officers

s 95 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch

Entry and search—evidence of offences

s 98 amd 1993 No. 66 s 3 sch

General powers of authorised officer in relation to places

s 99 amd 1994 No. 65 s 33

Offence related warrant

s 101 amd 1993 No. 66 s 3 sch

Secrecy

s 104 amd 1993 No. 66 s 3 sch

Proceedings for offences

s 105 amd 1994 No. 65 s 34

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Long Service Leave) Act 1991*

Certain persons liable for offences by unincorporated bodies

s 106 amd 1994 No. 65 s 3 sch

Powers of industrial magistrate

s 107 prev s 107 ins 1994 No. 65 s 36
 om R3 (see RA s 39)
 pres s 107 (prev s 97) amd 1993 No. 66 s 3 sch
 sub 1994 No. 65 s 35
 amd 1997 No. 21 s 38; 1999 No. 33 s 747 sch 3

Evidentiary provisions

s 108 sub 1994 No. 65 s 35
 amd 1998 No. 44 s 3 sch

Certificate as to payment of levy

s 109 amd 1994 No. 65 s 3 sch

Indemnity to persons administering Act

s 110 amd 1994 No. 65 s 3 sch

Protection of worker from dismissal

prov hdg amd 1998 No. 44 s 3 sch
s 111 amd 1993 No. 66 s 3 sch; 1994 No. 65 s 3 sch; 1998 No. 44 s 3 sch

Regulations

s 112 sub 1993 No. 66 s 3 sch

PART 11—TRANSITIONAL

pt hdg ins 1994 No. 65 s 36

Members of the Board

s 113 ins 1994 No. 65 s 36
 exp 1 July 1995 (see s 103(8))
 AIA s 20A applies (see s 103(7))

Authority is legal successor of board

s 114 ins 1994 No. 65 s 36
 exp 1 July 1995 (see s 104(3))
 AIA s 20A applies (see s 104(2))

Legal proceedings

s 115 ins 1994 No. 65 s 36
 exp 1 July 1995 (see s 105(3))
 AIA s 20A applies (see s 104(2))

PART 11—TRANSITIONAL

**Division 1—Transitional provision for Building and Construction Industry
(Portable Long Service Leave) Amendment Act 1994**

div hdg ins 1998 No. 44 s 19

References to board

s 116 ins 1994 No. 65 s 36

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Long Service Leave) Act 1991*

**Division 2—Transitional Provisions for Building and Construction Industry
(Portable Long Service Leave) Amendment Act 1998**

div hdg ins 1998 No. 44 s 20

Register of employees

s 117 ins 1998 No. 44 s 20

Registered employees

s 118 ins 1998 No. 44 s 20

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS [Reprint No. 3]
under the Reprints Act 1992 s 43 as required by the Building and Construction
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