



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

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Queensland

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

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

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

## Part 1 Preliminary

### 1 Short title

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

### 3 Definitions

The dictionary in the schedule defines particular words used in this Act.

### 3AA Meaning of *building and construction industry*

- (1) The *building and construction industry* is the industry of constructing, deconstructing, reconstructing, renovating, altering, demolishing, relocating, maintaining or repairing any of the following—
- (a) buildings;
  - (b) spa pools and swimming pools;
  - (c) roads, railways, airfields or other works for the passage of anything;
  - (d) breakwaters, docks, jetties, piers or wharves;
  - (e) works for solid waste disposal;

[s 3AA]

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- (f) works for subdividing or developing land;
- (g) works for the improvement or alteration of a harbour, river or watercourse for navigation purposes;
- (h) works for the storage or supply of water or for flood mitigation;
- (i) works for the irrigation of land;
- (j) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (k) works for extracting, refining, processing or treating materials or for producing or extracting products and by-products from materials;
- (l) works for conveying products, by-products or materials;
- (m) works for the drainage of land;
- (n) works for the storage of liquids, other than water, or gases;
- (o) works for the generation, supply or transmission of electric power;
- (p) works for telecommunication or for the transmission of radio or television;
- (q) bridges, viaducts, aqueducts or tunnels;
- (r) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
- (s) pipe lines;
- (t) navigational lights, beacons or markers;
- (u) pile driving works;
- (v) sporting or recreational facilities;
- (w) earthworks, other than for farming;
- (x) fences, other than fences on farms;
- (y) structures, fixtures or other works not included in paragraphs (a) to (x), but not including earthworks for farming or fences on farms.

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- (2) The ***building and construction industry*** also includes landclearing and site preparation, other than for farming.
  - (3) The ***building and construction industry*** also includes the industry of, whether on or off site—
    - (a) constructing a thing, other than ordinary stock for sale, in accordance with working drawings; or
    - (b) deconstructing, reconstructing, renovating, altering, demolishing, relocating, maintaining or repairing a thing, other than ordinary stock for sale, constructed in accordance with working drawings.
  - (4) The ***building and construction industry*** does not include the industry of performing maintenance or repairs of a minor nature to anything mentioned in subsection (1) or (3) for a person not substantially engaged in activity mentioned in subsection (1), (2) or (3).

### **3A Who is an *eligible worker***

- (1) An ***eligible worker*** is an individual who—
  - (a) under a contract of service is engaged to perform work in the building and construction industry for the majority of the person's ordinary hours of work; or
  - (b) under a contract, whether or not the contract is a contract of service, or at piecework rates, is engaged to perform work in the building and construction industry, for labour only or substantially for labour only, for the majority of the person's ordinary hours of work; or
  - (c) under a contract, whether or not the contract is a contract of service, performs work in the building and construction industry for the majority of the person's ordinary hours of work, unless—
    - (i) the individual—
      - (A) is paid to achieve a stated result or outcome; and

[s 3B]

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- (B) has to supply all, or substantially all, of the plant and equipment or tools of trade needed to perform the work; and
  - (C) is, or would be, liable for the cost of fixing a fault with the work performed; or
- (ii) a personal services business determination is in effect for the individual performing the work under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60.
- (2) Also, **eligible worker** includes—
- (a) an individual who is engaged to perform both work and supervision of other workers in the building and construction industry, whether or not the individual is known as a supervisor, leading hand or another title; and
  - (b) an individual who is appointed as a safety officer by the person conducting a business to advise the person in relation to work health and safety duties under the *Work Health and Safety Act 2011*, in relation to building and construction work, whether or not the individual performs or usually performs building and construction work.
- (3) This section is subject to section 3B.

### **3B When an individual is not an eligible worker**

- (1) An individual is not an eligible worker if—
- (a) the individual performs work in the building and construction industry—
    - (i) in a managerial, clerical, professional or ancillary capacity; or
    - (ii) under a contract of service with a partnership if the individual is a partner and participates in the management of the partnership or shares in its profits; or

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- (iii) under a contract of service with a government entity or a local government; or
  - (b) the individual is engaged under a contract of service with a non-Queensland government entity; or
  - (c) a regulation declares the individual is not an eligible worker because the work the individual performs is subject to stated coverage under a stated industrial instrument within the meaning of the *Industrial Relations Act 2016*; or
  - (d) the individual performs qualifying service within the meaning of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cwlth), section 39A(2).
- (2) Also, an individual who would otherwise be an eligible worker under section 3A(1) or (2) is not an eligible worker if the individual is engaged to perform building and construction industry work by—
- (a) a government entity; or
  - (b) a local government; or
  - (c) Mount Isa Mines Limited ACN 009 661 447; or
  - (d) a person who is not substantially engaged in the building and construction industry.
- (3) Subsection (2)(d) does not apply if the individual is a party to a contract with a labour hire agency that arranges for the individual to perform building and construction work for someone else under an arrangement between the agency and the other person.
- (4) In this section—
- arrangement** includes agreement, promise, scheme, transaction, understanding and undertaking, whether express or implied.

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#### **4 Meaning of *substantially engaged in the building and construction industry***

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.

#### **5 Act binds all persons**

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**

#### **6 Establishment of authority**

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

#### **7 Legal status of authority**

- (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.

## **8 Authority may operate under trading name**

The authority may operate under a trading name prescribed under a regulation.

## **Division 2 Functions and powers of authority**

### **9 Authority's functions**

- (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 collect building and construction industry training levy payable under this Act for payment to a building and construction industry training fund under this Act; and
  - (c) to act as an agent in collecting fees and charges payable under other Acts.
- (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 a regulation.

## **10 Authority's powers**

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

*Example for subsection (1)—*

collecting, under a contract or agreement, amounts that are not funds of the authority

- (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**

### **11 The board**

The authority has a board of directors.

### **12 Role of board**

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.

### **13 Composition of board**

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.

### **14 Appointment of directors**

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

### **15 Disqualification from board**

- (1) A person who—
  - (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.

## **16 Term of office**

- (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 gazette notice.

## **17 Vacating office**

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).

## **18 Casual vacancy**

- (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.

## **19 Board meetings**

- (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).

## **20 Procedure at meetings etc.**

- (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).

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- (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.
- (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.

## **21 Minutes**

- (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.

## **22 Custody and affixing of seal**

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

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- (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.

## **23 Execution of contracts and agreements**

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

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

## **24 Remuneration of directors**

- (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.

## **Part 4 Administration**

### **25 Administration subject to Minister**

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

### **26 General manager and staff employed under Public Service Act**

The general manager and staff of the authority are to be employed under the *Public Service Act 2008*.

### **27 Duties of general manager**

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

### **28 Things done by general manager**

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

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**29 General manager's power of delegation**

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

**30 Judicial notice of signatures**

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.

**31 Use of services of public service employees**

- (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.
- (2) The amount of salaries, wages or allowances paid from the departmental accounts of the department under the *Financial Accountability Act 2009*, section 69, 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**

**32 Funds of authority**

- (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.

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- (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 or the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.
- (3) Building and construction industry training levy paid to the authority is not part of the authority's funds.
- (4) Work health and safety levy paid to the authority must be paid by the authority to the relevant department for the consolidated fund.
- (5) In this section—

***relevant department*** means the department in which the *Work Health and Safety Act 2011* is administered.

### **33 Dealing with building and construction industry training levy**

As soon as practicable after receiving an amount of building and construction industry training levy, the authority must pay the amount to a building and construction industry training fund prescribed under a regulation to be held in trust for the training of persons in the building and construction industry.

### **34 Proposed budget and progress budget reports**

- (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.

### **35 Actuarial investigation of funds**

- (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.
- (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.

### **36 Application of Finance Acts**

- (1) The authority is a statutory body within the meaning of the *Financial Accountability Act 2009*.
- (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**

#### **37 Authority to keep register of workers**

- (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 the names of each other person—
    - (i) in relation to whom the authority has received a certificate of service from an employer under section 47, or other information; and
    - (ii) who the authority is satisfied is an eligible worker; 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.

### **38 Application for registration**

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

### **39 Approval or refusal of application for registration**

- (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).

#### **40 When person becomes a registered worker**

- (1) For section 37(2)(b), the date a person becomes a registered worker is—
  - (a) if the person becomes a registered worker on an application under section 38—the date the application is lodged with the authority; or
  - (b) otherwise—the date the certificate of service or other information about the person is received by the authority.
- (2) However, if the authority is satisfied that a person has been an eligible worker for a period before the date that would otherwise apply under subsection (1) for becoming a registered worker, the authority may fix an earlier date as the date the person became a registered worker.
- (3) In fixing a date under subsection (2), the authority must not fix a date earlier than the start of the financial year that is the second last full financial year before the date that would otherwise apply under subsection (1) for becoming a registered worker unless it is satisfied that special circumstances exist.

*Examples for applying subsection (3)—*

A person applies to become a registered worker on 1 February 2001. The authority may fix a date that is no earlier than 1 July 1998.

The authority receives a certificate of service from an employer in relation to a worker on 1 July 2001. The authority may fix a date that is no earlier than 1 July 1999.

- (4) Despite subsections (2) and (3), the authority must not fix a date earlier than—
  - (a) if the person is a person mentioned in section 3A(1)(a)—1 July 1992; or
  - (b) if the person is a person mentioned in section 3A(1)(b) or (2)—1 January 1999.

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## 41 Cancellation of registration

- (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) or (3).
- (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) 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

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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**

### **42            Authority to keep register of employers**

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

### **43            Application for registration**

- (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—40 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
    - (iii) each place in Queensland where books and records mentioned in section 92 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)—40 penalty units.

#### **44 Approval or refusal of application for registration**

- (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.

#### **45 Employer to notify authority of any change in circumstance**

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—40 penalty units.

#### **46 Cancellation of registration as a registered employer**

- (1) If a registered employer stops engaging eligible workers to perform work in the building and construction industry, the registered employer may, by notice, apply to the authority for cancellation of the registration.
- (2) If the authority refuses to cancel the registered employer's registration, the authority must give the registered employer written notice of the refusal and the reason for the refusal.

#### **46A Authority may require information or documents from person believed to be employer**

- (1) This section applies if the authority believes, on reasonable grounds, that a person is or has been an employer in the building and construction industry, but is not or has not been registered as an employer under this division.
- (2) The authority may, by written notice given to the person, require the person to give the authority the information or documents asked for in the notice that are necessary to enable the authority to decide whether or not the person is or has been an employer in the building and construction industry.
- (3) The notice may state a time, that must be reasonable in the circumstances, within which the information or documents must be given.
- (4) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (5) If a court finds that a person has contravened subsection (4), the court may, in addition to any order the court may make imposing a penalty, make any other order the court considers appropriate.
- (6) The person must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.



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## Division 3                      Service credits

### 47            Certificate of service to be supplied by employers

- (1) An employer in the building and construction industry that engages a worker must—
  - (a) give to the authority, in accordance with a regulation, 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 a certificate of service for the worker for the period specified in the notice.

Maximum penalty—40 penalty units.

- (2) The employer must also make the information contained in the certificate of service available to the worker to whom the information relates.

Maximum penalty—40 penalty units.

- (3) The authority may extend (for no longer than 2 months) the time specified in a notice served under subsection (1).
- (4) In this section—

*certificate of service*, for a worker, means a certificate in the approved form that complies with section 48.

### 48            Form and contents of certificate

- (1) A certificate of service under section 47 must—
  - (a) 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
  - (b) 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

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- worker in the performance of building and construction work; and
- (c) contain such particulars of building and construction work performed by the worker outside Queensland as are requested in the form; and
  - (d) contain such other particulars as are requested in the form; and
  - (e) be completed in accordance with the directions contained in the form.
- (2) The certificate of service must be verified in any way (including by statutory declaration) that the authority requires.

#### **49 Exemptions**

- (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.

#### **50 Number of days' service**

- (1) Subject to sections 51, 52 and 54, if the authority is satisfied that a registered worker was engaged in the performance of

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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) if the engagement was 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.

## **51 Year's service**

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.

### **51A Service credits for injured workers**

- (1) This section applies if—
  - (a) a registered worker sustains an injury, within the meaning of the *Workers' Compensation and Rehabilitation Act 2003*, section 32, while performing work for an employer; and
  - (b) the worker can not perform building and construction work because of the injury.
- (2) The worker must be credited in the register of workers with service as if the person had been engaged in the performance of building and construction work from the day of injury until the earlier of the following—
  - (a) the end of 6 months after the day of injury;
  - (b) the worker engages in any employment on a full-time basis.

## **52 Limitations on service credits**

- (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 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—
  - (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.

### **53 Notice to registered workers of service credits**

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.

### **54 Retrospective service credits**

- (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).
- (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* 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.

## **55 Application for retrospective service credits**

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

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## Part 7 Long service leave

### 56 Application for entitlement to long service leave or payment instead of long service leave

- (1) A registered worker who has service credits in the register of workers may apply to the authority in the approved form for—
  - (a) long service leave; or
  - (b) payment for the long service leave to which the registered worker is entitled under section 57.
- (2) If the building and construction industry award or agreement applying to the worker provides for the payment of all or part of an entitlement to long service leave instead of taking the leave or part of the leave, the worker and the authority may agree, by signed agreement, that the worker be paid for all or part of the entitlement in accordance with the award or agreement.
- (3) If no building and construction industry award or agreement provides for the worker to be paid all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made only if—
  - (a) the worker has accrued 10 years service in the register of workers; and
  - (b) the industrial relations commission has ordered the payment under the *Industrial Relations Act 2016*, section 110.
- (4) 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.

### 57 Entitlement to long service leave

- (1) The entitlement to long service leave is—

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- (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
    - (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) Subsection (3) applies if a worker—
- (a) either—
    - (i) has accrued at least 1540 days service; or
    - (ii) has—
      - (A) accrued at least 1155 days service; and
      - (B) been a registered worker for at least 7 years in the register of workers kept under this Act, or in a similar register or record kept under a corresponding law; and
  - (b) has not been credited with retrospective service credits under section 54; and
  - (c) either—
    - (i) intends to permanently stop work in the building and construction industry; or



- (ii) dies.
- (3) The entitlement to long service leave is a period that bears to 8.67 weeks the proportion that the worker's accrued service bears to 10 years service.
- (4) Long service leave is exclusive of any public holiday that happens during a period of long service leave that is taken.

## 59 Amount of long service leave payment

- (1) In this section—

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

**P** (pay), in relation to an application by a registered worker under section 56, means the lesser of the following amounts—

- (a) the amount of ordinary pay for a normal working week that is, in the authority's opinion, payable to the registered worker;
- (b) the amount fixed under section 59A(1).

**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 56, the authority must pay to the applicant long service leave payment worked out under the following formula—

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

- (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) The authority must pay a registered worker for any public holiday that happens during long service leave taken by the worker.
- (5) Unless it is likely to be the last payment for a long service leave entitlement paid to the applicant by the authority, the authority must not pay the applicant for a period of long service leave that is less than 5 days.
- (6) Long service leave is to be paid for as ordinary time.
- (7) 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.
- (8) 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 or agreement 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.
- (9) For the purpose of making long service leave payment at the higher rate, ordinary time at that rate is, subject to subsection (10), taken to be worked continuously by the worker during the period of long service leave.
- (10) If, during the worker's long service leave, the rate payable for ordinary time under the relevant award or agreement is—
  - (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 agreement; or
  - (b) decreased—the worker may be paid at the rate at which the worker is entitled to be paid before the decrease less

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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 or agreement.

- (11) 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 or agreement; 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.

### **59A Maximum amount of ordinary pay for normal working week**

- (1) For section 59(2), if *P* is an amount greater than \$1400, *P* is fixed at—
  - (a) for the period from commencement of this section until 30 June 2009—\$1400; or
  - (b) for any later financial year—the amount notified by the Minister by gazette notice.
- (2) As soon as practicable after 1 January in each year, the authority must review the cap and recommend the change to the cap that the authority considers appropriate.
- (3) In making its recommendation under subsection (2), the authority must take into account the following—
  - (a) WPI;
  - (b) rates of pay under building and construction industry awards and agreements that, in the authority's opinion, are representative of awards and agreements in the building and construction industry;

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- (c) the sufficiency of the funds of the authority, having regard to the current levy rate.
- (4) Before 1 July in each year, the Minister must consider the authority's recommendation and fix the cap for the following financial year.
- (5) The Minister must notify the cap before 1 July in the gazette.
- (6) In this section—

*cap* means the amount for P fixed under subsection (1).

*WPI* means the Queensland wage price index for the building and construction industry available quarterly from the Australian Bureau of Statistics or, if the index ceases to be published, another similar index prescribed under a regulation.

## **60 Long service leave payment not payable in certain cases**

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.

## **61 Election to take benefits under this Act or Industrial Relations Act**

- (1) A registered worker is not entitled to be paid long service leave for a period of service as a worker in the building and construction industry if the worker has taken or received—
  - (a) a benefit for the period under part 12, division 3 of the *Industrial Relations Act 1990* 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 3, or chapter 2A, part 2, division 6, or a law of another State that corresponds to those provisions; or

- (c) a benefit for the period under the *Industrial Relations Act 2016*, chapter 2, part 3, division 9, or a law of another State that corresponds to those provisions; or
  - (d) 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 paid long service leave for service 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;
- for a period by reference to which the leave or benefit was calculated, is not entitled to a benefit under the *Industrial Relations Act 2016*, chapter 2, part 3, division 9, or a benefit in the nature of long service leave under a scheme to which an exemption granted to an employer under section 113 of that Act relates.
- (5) Subject to this Act, a person is entitled to the benefit provided by this Act despite any other Act.

## 62 Payments to employers

- (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), in relation to an application by an employer under subsection (1) in relation to benefits provided to a registered worker, means the lesser of the following amounts—

- (a) the amount of ordinary pay for a normal working week that is, in the authority's opinion, payable to the registered worker;
- (b) the amount fixed under section 62AA(1).

*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).

- (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 2 years 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) An employer is entitled to be paid for any public holiday that happens during long service leave taken by a worker.
- (7) 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
  - (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;

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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.

- (8) If a payment is made to the authority under subsection (7), the authority must pay to the registered worker the value of the benefits to which the worker is entitled.
- (9) Payment by an employer under subsection (7) is taken to be a compliance by the employer with the LSL payment provisions in respect of the value of the benefits the employer, in accordance with that section, is required to pay the worker.
- (10) In this section—

*LSL payment provisions* means the *Industrial Relations Act 2016*, chapter 2, part 3, division 9, subdivision 5 or section 105, as the case requires.

## **62AA Maximum amount of ordinary pay for normal working week**

- (1) For section 62(1), if P is an amount greater than \$1400, P is fixed at—
  - (a) for the period from commencement of this section until 30 June 2009—\$1400; or
  - (b) for any later financial year—the amount notified by the Minister by gazette notice.
- (2) As soon as practicable after 1 January in each year, the authority must review the cap and recommend the change to the cap that the authority considers appropriate.
- (3) In making its recommendation under subsection (2), the authority must take into account the following—
  - (a) WPI;
  - (b) rates of pay under building and construction industry awards and agreements that, in the authority's opinion,



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- are representative of awards and agreements in the building and construction industry;
- (c) the sufficiency of the funds of the authority, having regard to the current levy rate.
- (4) Before 1 July in each year, the Minister must consider the authority's recommendation and fix the cap for the following financial year.
- (5) The Minister must notify the cap before 1 July in the gazette.
- (6) In this section—

*cap* means the amount for P fixed under subsection (1).

*WPI* means the Queensland wage price index for the building and construction industry available quarterly from the Australian Bureau of Statistics or, if the index ceases to be published, another similar index prescribed under a regulation.

## **62A Payment to worker or personal representative instead of employer in particular circumstances**

- (1) This section applies if—
- (a) the employer of a registered worker is or becomes an insolvent under administration or an externally-administered body corporate; and
- (b) a worker of the employer is eligible for long service leave or payment for the long service leave.
- (2) The authority may pay to the worker or the worker's personal representative the difference between—
- (a) the amount that represents the value of the worker's long service leave under this Act; and
- (b) any amount that the worker or personal representative has received from or on behalf of the employer for the worker's long service leave under this Act.
- (3) This section applies despite anything in section 61.
- (4) In this section—

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*externally-administered body corporate* see the Corporations Act, section 9.

*insolvent under administration* see the Corporations Act, section 9.

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

- (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
  - (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.
- (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.

## **64 Authority's liability confined to long service leave**

The authority is not taken to be—

- (a) an employer of a worker; or

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- (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.

## **65 Payment when due**

- (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 Levies**

## **66 Imposition of levies**

The following levies are imposed on building and construction work—

- (a) building and construction industry training levy;
- (b) long service leave levy;
- (c) work health and safety levy.

## **67 Notification of building and construction work**

- (1) If building and construction work is to be carried out, an approved form must be filed, as required under subsection (2), with the authority or its agent by or for the person for whom the work is to be done.

Maximum penalty—40 penalty units.

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- (2) The approved form must be filed—
    - (a) if a development permit under the Planning Act is required for the work—before the permit is given; or
    - (b) if a permit under the *Plumbing and Drainage Act 2018* is required for the work—before the permit is issued; or
    - (c) otherwise—before the work starts.
  - (3) However, the form need not be filed if levy is not payable because of section 70(2)(a).
  - (4) Also, if the actual cost of carrying out building and construction work is at least \$50,000 more than the amount on which the levy payable for the work was calculated, the person for whom the work was done must, within 30 days after the work ends—
    - (a) give the authority notice of the increased cost of the work; and
    - (b) pay to the authority the additional amount of levy payable because of the increased cost.

Maximum penalty for subsection (4)—40 penalty units.

## **68 Offence for failure to pay levy**

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—40 penalty units.

## **68A Deciding who is person for whom work is to be done or was to be done**

- (1) This section applies for deciding who is the person for whom work is to be done or was to be done.
- (2) Regard may be had to any document or anything else reasonably likely to help to establish the identity of the person for whom the work is to be done or was to be done.

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(3) The authority may, by written notice given to a person, require the person to give the authority within a reasonable time a document or information or any thing else that may help to establish the identity of the person for whom the work is to be done or was to be done.

(4) The person given a notice under subsection (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) If a court finds that a person has contravened subsection (4), the court may, in addition to any order the court may make imposing a penalty, make any other order the court considers appropriate.

(6) The person must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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

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.

## **70 No levy for certain building and construction work**

(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.

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## 71 Exemption from payment of levy

- (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.
- (2) The authority may exempt a person (the *first 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 first person by—
  - (a) the first person; or
  - (b) the first person's workers; or
  - (c) another person who—
    - (i) carries out the work under a contract with the first person; and
    - (ii) is not substantially engaged in the building and construction industry; or
  - (d) if the first person is a body corporate—a subsidiary of the first person that is not substantially engaged in the building and construction industry.
- (3) In this section—  
*subsidiary* see the *Corporations Act 2001* (Cwlth), section 9.

## 72 Rate of levy

- (1) A regulation may prescribe percentages of the cost of building and construction work as the amount imposed for the following—
  - (a) building and construction industry training levy;
  - (b) long service leave levy;
  - (c) work health and safety levy.
- (2) An amount calculated under subsection (1) is to be rounded to the nearest dollar (with 50c to be rounded downwards).

### 73 Meaning of *cost* of building and construction work

- (1) The *cost* of building and construction work is the total of all costs (excluding GST) that relate to the work directly or indirectly, less any exempt costs.

*Examples of costs—*

costs of labour, materials, plant, equipment, design, project management, consultancy, prefabricated goods, commissioning, installation

- (2) Without limiting subsection (1), the total of all costs—
- (a) includes the direct and indirect cost of all materials—
- (i) manufactured, purchased, acquired or otherwise sourced interstate or overseas; and
- (ii) used for the work in Queensland; and
- (b) may be ascertained having regard to—
- (i) the contract price for the work; or
- (ii) if the work is being done for someone other than the Commonwealth and involves more than 1 contract, the total of the contract prices.
- (3) Despite subsections (1) and (2), if there is no contract price or the authority is satisfied that the contract price, or the total of the contract prices, for carrying out the building and construction work does not accurately establish the total of all costs that relate to the work, the cost may be decided by the authority.

- (4) In this section—

*environmental impact statement* means an environmental impact statement under—

- (a) the *Environmental Protection Act 1994*; or
- (b) the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth); or
- (c) the repealed *Sustainable Planning Act 2009*; or
- (d) the *State Development and Public Works Organisation Act 1971*.



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***exempt costs***, for building and construction work, means costs (excluding GST) that relate directly or indirectly to the preparation of the following for the work—

- (a) an environmental impact statement;
- (b) a feasibility study.

***feasibility study***, for building and construction work, means—

- (a) any assessment, conducted before a decision is made to fund the work, of the likelihood that the work can be successfully completed; or

*Examples of assessments that may form all or part of a feasibility study—*

- whether the work complies with any applicable law
  - whether the work is technically and commercially feasible
- (b) another assessment conducted in relation to the work, of a similar nature to an assessment mentioned in paragraph (a), declared by the authority to be a feasibility study for the work for the purposes of this section.

## 74 Liability for levy

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 the work is being done for a local government, government entity or non-Queensland government entity—the local government or entity; or
- (c) if neither paragraph (a) nor (b) applies and under the Planning Act an application is made to the assessment manager in relation to the work for a development permit for building work, plumbing or drainage work or operational work as defined under that Act—the applicant under that Act; or

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- (d) if none of paragraphs (a), (b) and (c) apply and under the *Plumbing and Drainage Act 2018* an application is made to the local government for a permit that authorises plumbing or drainage work—the applicant under that Act; or
- (e) otherwise—the person for whom the work is to be done.

## **75 When levy is payable**

- (1) Levy for building and construction work to be carried out by a person must be paid—
  - (a) before either of the following is given—
    - (i) a development permit under the Planning Act in relation to work that authorises building work, plumbing or drainage work or operational work as defined under that Act;
    - (ii) a permit under the *Plumbing and Drainage Act 2018* that authorises plumbing or drainage work for which a development permit under the Planning Act is not required; or
  - (b) if a development permit or a permit mentioned in paragraph (a) is not given, before the work is started.
- (2) For subsection (1), the authority may, on written application, allow a later time for payment in a particular case.

*Note—*

Under section 82, levy may also be paid by instalment in particular circumstances.

## **76 Government entity to notify authority of building and construction work**

- (1) A government entity must notify the authority of building and construction work to be carried out by the entity.
- (2) The notice must be given in the approved form before the levy is payable.

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- (3) Subsection (1) applies only if the cost of the work is not less than the cost prescribed by regulation.
  - (4) Subsection (1) is in addition to section 80(2).

## 77 Duty to sight approved form

- (1) This section applies if an application is made to—
  - (a) an assessment manager, for a development permit under the Planning Act that authorises building work, plumbing or drainage work or operational work as defined under that Act; or
  - (b) a local government, for a permit under the *Plumbing and Drainage Act 2018* that authorises plumbing or drainage work for which a development permit under the Planning Act is not required.
- (2) The assessment manager or local government (the **relevant authority**) must not give the development permit or permit unless the relevant authority has seen—
  - (a) an approved form issued by the authority that clearly shows—
    - (i) that the levy or the first instalment of the levy has been paid; or
    - (ii) that an exemption from payment of the levy exists in relation to the work; or
    - (iii) that an exemption from immediate payment of levy exists in relation to the work; or
  - (b) written advice from the authority stating something mentioned in paragraph (a).

Maximum penalty—40 penalty units.

- (3) The assessment manager or 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.

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- (4) Subsection (2) does not apply to an application about building and construction work if no levy is payable for the work under section 70(2).
- (5) In this section—

*assessment manager*, for an application mentioned in subsection (1)(a), means—

  - (a) the assessment manager for the application under the Planning Act; or
  - (b) if a private certifier (class A) is, under the *Building Act 1975*, section 11(2), the assessment manager for the application—the private certifier (class A).

## 79 Voluntary performance of building and construction work

- (1) Levy is not payable for the voluntary component of building and construction work to be carried out by or for an entity if, in the authority's opinion—
  - (a) the entity is a non-profit organisation; or
  - (b) the purpose for which the voluntary component of building and construction work is to be carried out is a charitable purpose.
- (2) In this section—

*non-profit 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.

## 80 Additional provisions about levy

- (1) This section applies in relation to building and construction work for which the authority believes, on reasonable grounds, that levy is payable.
- (2) The authority may, by written notice, require anyone the authority reasonably believes has information or documents

about the work, 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) A person to whom a notice under subsection (2) is given must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (4) If a court finds that a person has contravened subsection (3), the court may, in addition to any order the court may make imposing a penalty, make any other order the court considers appropriate.
- (5) The person must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (6) 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 a regulation;

then, despite anything in section 74, each person for whom any of the work was or is to be done must, on receiving written notice from the authority, pay to the authority without delay the amount of additional levy decided by the authority as fairly attributable to the work done or to be done for the person.

Maximum penalty—40 penalty units.

- (7) 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

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- (b) an offence against subsection (6) brought against the person liable to pay the additional levy.
- (8) The additional levy must be worked out under a regulation.

## **81 Refunds of levy**

- (1) A person who has paid 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 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 a regulation.
- (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.

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## **82 Payment of levy by instalments**

- (1) Despite section 75, the person liable to pay levy may apply in writing to the authority for approval to 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 a regulation; and
  - (b) the time reasonably needed to perform the work is longer than 1 year.
- (2) The authority may approve or refuse the person's application to pay the levy by instalments.
- (3) If the authority approves the person's application to pay the levy by instalments, 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).
- (4) 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.
- (5) 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.
- (6) If a person pays levy by instalments, an instalment of levy that is not payable—
  - (a) is not recoverable by the authority; and
  - (b) does not bear interest under section 84.
- (7) If a person fails to pay an instalment of levy at or before the time for its payment—

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- (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 levy;

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

- (8) The authority may accept the payment of an instalment of levy that is made after the time for its payment.
- (9) For the purposes of this section, an instalment mentioned in subsection (8) is, if the authority so directs, taken to have been paid at the time for its payment.

### **83 Appointment of agents for collection of levy**

- (1) The authority may enter into agreements with agents appointed by it for the collection of levy.
- (2) An agreement may provide for the payment of remuneration for an agent.

### **84 Interest on, and extension of time for payment of, levy**

- (1) An amount due in respect of levy and not paid at or before the time for its payment bears compound interest at the rate prescribed under a regulation.
- (2) Interest payable under subsection (1) forms part of the unpaid levy and may be recovered as a debt in a court having jurisdiction up to the amount of the unpaid levy.
- (3) The authority may, in special circumstances, direct that—
  - (a) the time for payment of 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).

## **85 Recovery of levy**

- (1) Levy that has become payable to the authority is a debt payable to it.
- (2) 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.
- (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 levy in respect of the building and construction work; and
  - (c) the levy has not been fully paid;
- the authority may make an assessment of the amount of 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.

## **86 Penalties no relief from levy**

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

## Part 9 Appeals

### 87 Reconsideration by authority

- (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—
  - (c) within 45 days after the decision, determination, direction or notice is given to the person; or
  - (d) within a longer period prescribed under a regulation; 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.

### 88 Appeal to industrial magistrate

- (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)—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
  - (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.

## **89 Appeal from industrial magistrate to Industrial Court**

- (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.

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- (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**

### **90            Arrangements with other States and with Territories**

- (1) For the purposes of this Act, the Minister may, from time to time, enter into an agreement to carry out an arrangement mentioned in subsection (2).
- (2) The Minister may agree to reciprocal arrangements, with respect to the matters mentioned in subsection (3), 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.

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## **90A Arrangements with other entities**

- (1) For the purposes of this Act, the authority may, from time to time, enter into an agreement with an entity in Queensland to carry out an arrangement in relation to—
  - (a) the payment of long service leave to persons engaged in the building and construction industry; and
  - (b) the exchange of information about credits and entitlements to payments between the authority and the entity; and
  - (c) matters related to a matter mentioned in paragraph (a) or (b).
- (2) An agreement under subsection (1) may be amended or cancelled by a later agreement.

## **91 Declaration**

- (1) Subject to subsection (2), a regulation 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.

## **92 Keeping, and inspection, of books and records**

- (1) A person who engages workers to perform building and construction work must keep the books and records about workers prescribed under a regulation.  
Maximum penalty—40 penalty units.
- (2) A regulation may prescribe the particulars about workers the books and records must contain.

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- (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—40 penalty units.

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

### **93 Conflict of interest**

- (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.

### **94 Holders of office to act honestly and with propriety**

- (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.

## **95 Authorised officers**

- (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—40 penalty units.

## **96 Authorised officer to produce identity card**

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.

## **97 Entry and search—monitoring compliance**

- (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; or
  - (d) the place is a place where the authorised officer reasonably believes a person has information or documents about workers or building and construction work.
- (3) For subsection (2)(a) or (d), the place does not include part of the place where a person resides.
- (4) For subsection (2)(d), the entry may only be made when the place is ordinarily open for the conduct of business or otherwise open for entry.



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## 98 Entry and search—evidence of offences

- (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.
- (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—

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

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

- (5) An authorised officer who seizes or damages anything under this section must give written notice of particulars of the thing or damage.
- (6) The notice must be given to—
  - (a) if anything is seized—the person from whom the thing was seized; or
  - (b) if damage is caused to anything—the person who appears to the authorised officer to be the owner.

## **99 General powers of authorised officer in relation to places**

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

## **100 Monitoring warrant**

- (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—

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- (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.

## 101 Offence related warrant

- (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.

## **102 Obstruction etc. of authorised officers**

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—40 penalty units.

## **103 False or misleading statements**

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—40 penalty units.

## 104 Secrecy

- (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
- (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.

## **105 Proceedings for offences**

- (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.
- (3) A provision of this Act that provides for an offence for failing to comply with an order of a court does not limit the power of the court to punish for contempt.

**106 Certain persons liable for offences by unincorporated bodies**

(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—40 penalty units.

(3) If an unincorporated body fails to pay 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—

- (c) that the failure of the unincorporated body to comply with a provision of this Act, or to pay 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.



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## 107 Powers of industrial magistrate

For this Act, an industrial magistrate has all the powers conferred on an industrial magistrate under the *Industrial Relations Act 2016*, as far as the powers are appropriate for issues to be decided under this Act.

## 108 Evidentiary provisions

- (1) This section applies to a proceeding under this Act or another Act prescribed under a regulation.
- (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;
  - (c) on a stated day, an application for registration as an employer under section 43 had, or had not, been received by the authority;

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- (d) on a stated day, a certificate of service under section 47(1)(a) or (b) 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.

### **109 Certificate as to payment of levy**

A certificate that appears to be signed by the general manager certifying—

- (a) that, on a specified date, a specified amount of 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 levy, in respect of carrying out of specified building and construction work, was not so paid; or
- (c) that no amount of levy was payable in respect of specified building and construction work;

is evidence of the matters certified.

### **110 Indemnity to persons administering Act**

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

## **111 Protection of worker from dismissal**

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—40 penalty units.

## **111A Penalties to be paid to authority**

All penalties recovered as a result of proceedings for offences against this Act brought by the authority must be ordered to be paid to the authority.

## **112 Regulations**

- (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 provisions**

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

## **116 References to board**

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.

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

### **117 Register of employees**

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.

### **118 Registered employees**

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

## **Division 3**                      **Transitional provision for WorkCover Queensland and Other Acts Amendment Act 2000**

### **119 Government apprentices and trainees**

- (1) Subsection (2) applies if—
  - (a) immediately before 1 January 2001, a person is engaged under an apprenticeship or traineeship in the building and construction industry with—
    - (i) a local government; or
    - (ii) a government entity; and
  - (b) on or after 1 January 2001, the person stops being engaged by the local government or government entity; and
  - (c) at any time after the person stops being engaged by the local government or government entity, the person becomes a registered worker.

- (2) Despite the fact that the person was not an eligible worker during the period of apprenticeship or traineeship, the person must be credited with service under section 50 as if the person had been a registered worker during the period of apprenticeship or traineeship, but only in relation to the period of apprenticeship or traineeship happening on or after 1 January 2001.
- (3) Subsection (4) applies if—
  - (a) on or after 1 January 2001, a person starts being engaged under an apprenticeship or traineeship in the building and construction industry with—
    - (i) a local government; or
    - (ii) a government entity; and
  - (b) after 1 January 2001, the person stops being engaged by the local government or government entity; and
  - (c) at any time after the person stops being engaged by the local government or government entity, the person becomes a registered worker.
- (4) Despite the fact that the person was not an eligible worker during the period of apprenticeship or traineeship, the person must be credited with service under section 50 as if the person had been a registered worker during the period of apprenticeship or traineeship.

## **Division 4                      Transitional provisions for Building and Construction Industry (Portable Long Service Leave) Amendment Act 2005**

### **120      Eligible workers**

An individual who, immediately before 1 July 2005, was an eligible worker because of the person's employment continues to be an eligible worker while continuing in that employment after 30 June 2005.

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## **121 Notice of cancellation of employer's registration**

Section 46, as in force immediately before 1 July 2005, continues to apply to a notice of cancellation of an employer's registration given before 1 July 2005, but not received by the authority before 1 July 2005.

## **Division 5 Transitional provisions for Transport and Other Legislation Amendment Act 2008, part 12, division 2**

### **122 Cap applicable to all applications received on or after commencement**

- (1) This section applies to a person who has an entitlement in relation to long service leave or to a payment for benefits before the commencement of this section.
- (2) Sections 59A and 62AA apply to all applications received by the authority on or after the commencement.
- (3) To remove any doubt, it is declared that section 59A does not apply to an application, received by the authority before the commencement, for long service leave or payment for long service leave to be taken on or after the commencement if the applicant is entitled to take the leave applied for or to receive the payment for the leave applied for when the application is received by the authority.
- (4) In this section—  
*application* means—
  - (a) for section 59A—an application under section 56; or
  - (b) for section 62AA—an application under section 62.

*benefits* means benefits mentioned in section 61 provided to a registered worker.

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## Division 6                      **Transitional provision for Electrical Safety and Other Legislation Amendment Act 2009**

### 123      **Notices published in industrial gazette**

- (1) This section applies if, before the commencement, a notice was published in the industrial gazette as permitted by section 16(2) as in force before the commencement.
- (2) The notice continues to have been published for section 16 after the commencement despite the amendment of that section by the *Electrical Safety and Other Legislation Amendment Act 2009*.
- (3) In this section—

*commencement* means the commencement of this section.

*industrial gazette* means the Queensland Government Industrial Gazette.

## Division 7                      **Transitional provisions for Work Health and Safety Act 2011**

### 124      **Liability to pay fee under regulation preserved**

- (1) This section applies to a fee payable under the *Workplace Health and Safety Regulation 2008*, part 9 that is unpaid immediately before the repeal of part 9 of the regulation under the *Work Health and Safety Act 2011*, section 329.
- (2) Despite the repeal, part 9 continues to apply for the purpose of the enforcement of the liability to pay the fee and for recovery of the fee.

## **Division 8                      Transitional provision for Planning (Consequential) and Other Legislation Amendment Act 2016**

### **125      Existing particular development applications or requests for compliance assessment**

- (1) Subsection (2) applies to—
  - (a) an existing application for a development permit mentioned in former section 74(c); and
  - (b) an existing request for compliance assessment mentioned in former section 74(ca).
- (2) Former section 74 continues to apply in relation to the application or request as if the amending Act had not been enacted.
- (3) Subsection (4) applies to—
  - (a) an existing application for a development permit mentioned in former section 75(1)(a)(i); and
  - (b) an existing request for compliance assessment in relation to work mentioned in former section 75(1)(a)(i).
- (4) Former section 75 continues to apply in relation to the application or request as if the amending Act had not been enacted.
- (5) Subsection (6) applies to—
  - (a) an existing application for a development permit mentioned in former section 77(1)(a); and
  - (b) an existing request for compliance assessment of work mentioned in former section 77(1A).
- (6) Former section 77 continues to apply in relation to the application or request as if the amending Act had not been enacted.
- (7) In this section—



***amending Act*** means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

***existing application*** means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

***existing request for compliance assessment*** means a request for compliance assessment made under the repealed Planning Act, to which the Planning Act, section 288 applies.

***former***, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

***repealed Planning Act*** means the repealed *Sustainable Planning Act 2009*.

## Schedule Dictionary

### section 3

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

***assessment manager*** has the meaning given by the Planning Act.

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

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

***board*** means the authority's board of directors.

***building and construction industry*** see section 3AA.

***building and construction industry award or agreement*** means either of the following applying to the building and construction industry—

- (a) an industrial instrument under the *Industrial Relations Act 2016*;
- (b) a federal industrial instrument.

***building and construction industry training levy*** means levy that is imposed under part 8, and includes—

- (a) an additional amount of levy imposed under section 80; and
- (b) any interest under section 84.

***building and construction work*** means any work performed in the building and construction industry.

***corresponding authority*** means the authority that is responsible for the day-to-day administration of a corresponding law.

***corresponding law*** means a law declared under section 91(1) to be a corresponding law for the purposes of this Act.

***cost***, of building and construction work, see section 73.

***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 Act 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.

***levy*** means—

- (a) building and construction industry training levy; and
- (b) long service leave levy; and
- (c) work health and safety 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 Act 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

(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 and Construction Commission Act 1991*.

**person** includes government entity and unincorporated body.

**Planning Act** means the *Planning Act 2016*.

**private certifier** see the Planning Act, schedule 2.

**private certifier (class A)** means a private certifier whose licence as a building certifier under the *Building Act 1975* has a development approval endorsement under that Act.

**public holiday** includes, for working out a person's entitlements under this Act, the part-day that is a public holiday under the *Holidays Act 1983*, section 2(3).

**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.

**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.

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

**worker** means eligible worker.

**work health and safety levy** means levy that is imposed under part 8, and includes—

- (a) an additional amount of levy imposed under section 80; and
- (b) any interest under section 84.

**year's service** means a year's service within the meaning of section 51.