



# **Community Services Industry (Portable Long Service Leave) Act 2020**

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Queensland

# Community Services Industry (Portable Long Service Leave) Act 2020

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# Community Services Industry (Portable Long Service Leave) Act 2020

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

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Community Services Industry (Portable Long Service Leave) Act 2020*.

### 2 Commencement

- (1) This Act, other than the following provisions, commences on a day to be fixed by proclamation—
  - (a) part 3;
  - (b) sections 119, 120 and 125;
  - (c) part 13, divisions 2 to 7;
  - (d) schedule 2.
- (2) Part 13, divisions 5 and 6 commence on 1 July 2020.

### 3 Act binds all persons

- (1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence against this Act.

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#### **4 Main purpose of Act**

The main purpose of this Act is to establish a scheme for the portability of long service leave for workers in the community services industry.

## **Part 2 Interpretation**

#### **5 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

#### **6 Meaning of *community services industry***

The *community services industry* is the industry in which entities provide community services in Queensland.

#### **7 Meaning of *community services* and *community services work***

- (1) *Community services* are services of a type stated in schedule 1 or prescribed by regulation.
- (2) *Community services work* is work to—
  - (a) provide community services; or
  - (b) support the provision of community services.

*Example for paragraph (b)—*  
administrative support

#### **8 Meaning of *worker***

- (1) A *worker* is an individual who is—
  - (a) engaged by an employer to perform community services work; or
  - (b) self-employed and performing community services work.

- (2) However, a **worker** does not include an individual who is a member of a class of individuals prescribed by regulation not to be a worker.

## 9 Meaning of **employer**

- (1) Each of the following entities is an **employer**—
- (a) an entity established for, or with purposes including, the provision of community services that engages an individual;
  - (b) an individual who is self-employed and provides community services;
  - (c) a provider of labour hire services that supplies an entity mentioned in paragraph (a) or (b) with an individual to perform community services work for the entity;
  - (d) an entity prescribed by regulation to be an employer.
- (2) However, an **employer** does not include—
- (a) the Commonwealth; or
  - (b) the State; or
  - (c) a local government; or
  - (d) an entity prescribed by regulation not to be an employer.
- (3) In this section—

**labour hire services** see the *Labour Hire Licensing Act 2017*, section 7.

**provider** see the *Labour Hire Licensing Act 2017*, section 7.

## **Part 3**                      **Community Services Industry (Portable Long Service Leave) Authority**

### **Division 1**                      **Establishment and status**

#### **10**            **Establishment**

The Community Services Industry (Portable Long Service Leave) Authority is established.

#### **11**            **Legal status**

- (1) The authority—
  - (a) is a body corporate; and
  - (b) may sue and be sued in its corporate name.
- (2) The authority does not represent the State.

#### **12**            **Authority is a statutory body**

- (1) The authority is a statutory body under—
  - (a) the *Financial Accountability Act 2009*; and
  - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way that Act affects the authority's powers.

### **Division 2**                      **Functions and powers**

#### **13**            **Functions**

The authority has the following functions—

- (a) to provide an equitable and efficient system of portable long service leave for individuals working in the community services industry;
- (b) to provide educational and awareness programs to the industry to encourage worker registration and industry compliance with this Act;
- (c) to give advice and make recommendations to the Minister about—
  - (i) issues affecting the provision of long service leave in the industry; or
  - (ii) the operation of this Act

## **14 Powers**

- (1) The authority has the powers of an individual.
- (2) Without limiting subsection (1), the authority may—
  - (a) borrow funds from the Contract Cleaning Industry Authority to provide for its administration expenses or to make other payments under this Act; or
  - (b) otherwise borrow funds under the *Statutory Bodies Financial Arrangements Act 1982*.
- (3) The authority also has any other power given to it under this or another Act.

## **Division 3 Board**

### **Subdivision 1 Establishment, functions and powers**

## **15 Establishment**

A board is established as the governing body of the authority.

## 16 Functions

The board has the following functions—

- (a) to ensure the authority performs its functions in an appropriate, effective and efficient way;
- (b) to perform any other function given to the board under this Act or another Act.

## 17 Powers

The board has the power to do anything necessary or convenient to be done in performing its functions.

## Subdivision 2 Membership

### 18 Members

- (1) The board consists of the following persons (each a *director*)—
  - (a) a person appointed as the chairperson;
  - (b) a person appointed as a deputy chairperson;
  - (c) 3 persons appointed as representatives of employers;
  - (d) 3 persons appointed as representatives of workers.
- (2) A director must be appointed by the Governor in Council.

### 19 Deputy chairperson

- (1) The person appointed as deputy chairperson must be appropriately qualified in at least 1 of the following areas—
  - (a) commerce;
  - (b) economics;
  - (c) finance;
  - (d) management.

- (2) The deputy chairperson must act as chairperson—
  - (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent or otherwise can not perform the duties of the office.

## **20 Term of appointment**

- (1) A director holds office for the term, not longer than 3 years, stated in the member's instrument of appointment.
- (2) Subsection (1) does not prevent a director being reappointed.
- (3) However, a person must not be reappointed as a director if the total period of the person's appointment would be more than 9 years.

## **21 Conditions of appointment**

- (1) A director is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A director holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.

## **22 Disqualification**

- (1) A person is disqualified from becoming, or continuing as, a director if the person—
  - (a) has a conviction, other than a spent conviction, for an indictable offence; or
  - (b) is an insolvent under administration; or
  - (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6.
- (2) In this section—

*spent conviction* means a conviction—

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- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

## **23 Vacancy of office**

The office of a director becomes vacant if—

- (a) the director completes a term of office and is not reappointed; or
- (b) the director resigns from office by signed notice given to the Minister; or
- (c) the director is absent without the board's permission and without a reasonable excuse from 3 consecutive meetings of the board; or
- (d) the director becomes disqualified under section 22; or
- (e) the Governor in Council is satisfied the director is incapable of satisfactorily performing the director's functions and removes the director from office.

## **24 Acting director**

- (1) This section applies if the office of a director is vacant.
- (2) The Governor in Council may appoint a person to act in the office for a period that is not longer than the remaining part of the term of the office.
- (3) A person must not be appointed to act in the office unless the person is otherwise eligible to be appointed to the office under this subdivision.



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## Subdivision 3 Business

### 25 Meaning of *material personal interest*

- (1) A director has a *material personal interest* in a matter if any of the following entities stands to gain a benefit or suffer a loss, either directly or indirectly, because of the outcome of the consideration of the matter—
  - (a) the director;
  - (b) the director's spouse;
  - (c) a parent, child or sibling of the director;
  - (d) an employer, other than a government entity, of the director;
  - (e) an entity, other than a government entity, of which the director is an office holder.
- (2) In this section—

*government entity* see the *Public Sector Act 2022*, section 276.

### 26 Conduct of business

Subject to this subdivision, the board may conduct its business in the way it considers appropriate.

### 27 Attendance at meetings by electronic means

The board may hold board meetings, or allow directors to participate in board meetings, by using any electronic means.

### 28 Frequency of meetings

- (1) The chairperson may convene a board meeting as often as is necessary for the performance of the authority's functions and the exercise of its powers under this Act.
- (2) However, the chairperson must convene a board meeting if—

- (a) the board has not met for a period of 3 months; or
- (b) a director appointed under section 18(1)(c) or (d) gives the chairperson a notice requesting a board meeting.

## **29 Presiding at board meetings**

The chairperson is to preside at all board meetings at which the chairperson is present.

*Note—*

See section 19(2) for when the deputy chairperson must act as chairperson.

## **30 Minutes**

The board must keep minutes of each board meeting.

## **31 Quorum**

- (1) Business must not be conducted at a board meeting unless a quorum is present.
- (2) A quorum for a board meeting is—
  - (a) the chairperson or deputy chairperson; and
  - (b) a director appointed under section 18(1)(c); and
  - (c) a director appointed under section 18(1)(d).

## **32 Voting at board meetings**

- (1) Each director present at a board meeting has a vote on each question to be decided at the meeting.
- (2) A question at the board meeting is decided by a majority of the votes of the directors present at the meeting and able to vote on the question.
- (3) A director present at the board meeting who abstains from voting on a question is taken to have voted for the negative

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unless the director abstains because the director has disclosed a material personal interest in the question.

- (4) If the votes are equal, the director presiding at the board meeting also has a casting vote.
- (5) When considering a question, directors must have regard to any material from, or comments by, the general manager given to the directors about the question.

### **33 Disclosure of interests at board meetings**

- (1) This section applies to a director if—
  - (a) a matter is being considered, or is about to be considered, at a board meeting; and
  - (b) the director has a material personal interest in the matter; and
  - (c) the material personal interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter.
- (2) As soon as practicable after the relevant facts come to the knowledge of the director, the director must disclose the nature of the material personal interest to the other directors at the board meeting.
- (3) The director may further participate in the board meeting only if a majority of the other directors present at the meeting vote in favour of the director's further participation.
- (4) However, the director may not participate in any vote on the matter at the meeting.
- (5) A disclosure under subsection (2) must be recorded in the minutes of the meeting.
- (6) A failure to make a disclosure under subsection (2) does not, of itself, invalidate a decision of the board.

### **34 Decisions on questions in writing**

- (1) This section applies if—

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- (a) the general manager gives each director a question in writing to be decided; and
  - (b) the chairperson does not convene a board meeting to consider the question.
- (2) If a director has a material personal interest in the question, the director—
  - (a) must, as soon as practicable, disclose the nature of the material personal interest to the other directors; and
  - (b) must not vote in writing on the question.
- (3) The question may be decided by majority vote of the directors voting on the question and able to vote on the question.
- (4) At least 1 of the directors voting on the question must be either the chairperson or deputy chairperson.
- (5) If the votes are equal and the chairperson is voting, the chairperson has the casting vote.
- (6) If the votes are equal and the chairperson is not voting, the deputy chairperson has the casting vote.
- (7) When considering the question, directors must have regard to any material from, or comments by, the general manager given to the directors in writing about the question.
- (8) A failure to make a disclosure under subsection (2)(a) does not, of itself, invalidate a decision of the board.

## **Division 4 Administration**

### **35 Administration subject to Minister**

Subject to the Minister, the authority administers this Act.

### **36 General manager**

The *general manager* of the authority is the person appointed as the general manager of the Building and Construction Industry Authority.

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**37 Management of authority**

Subject to the board, the general manager is to manage the business of the authority.

**38 Staff and services for authority**

- (1) The staff of the Building and Construction Industry Authority must provide the Community Services Industry Authority with the administrative support services that it requires to carry out its functions effectively and efficiently.
- (2) Subject to this Act, a member of the staff may do anything necessary or convenient for the discharge of the functions of the Community Services Industry Authority.

**39 Document presumed to be properly made**

A document made by the authority is presumed to be properly made if it is signed by the chairperson, deputy chairperson or general manager.

**40 Agreement about administration of Act**

- (1) The Community Services Industry Authority may enter into a written agreement with a corresponding industry authority in relation to the administration of this Act.
- (2) Without limiting subsection (1), the agreement may provide that the corresponding industry authority—
  - (a) pay the Community Services Industry Authority's administrative expenses; and
  - (b) recoup the administrative expenses from the Community Services Industry Authority, with interest at a rate stated in the agreement.
- (3) In this section—

***administrative expenses*** includes the following expenses—

  - (a) staff costs;

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- (b) rent;
- (c) electricity costs.

*corresponding industry authority* means—

- (a) the Building and Construction Industry Authority; or
- (b) the Contract Cleaning Industry Authority.

## **Division 5                      Financial provisions**

### **41            Funds**

- (1) The funds of the authority consist of the following amounts—
  - (a) levy amounts paid to the authority;
  - (b) amounts borrowed by the authority;
  - (c) proceeds from investments by the authority;
  - (d) other amounts received by the authority.
- (2) The funds may only be applied in making any of the following payments or investments—
  - (a) long service leave payments;
  - (b) payments for expenses incurred in the administration of this Act including, for example, payments to a corresponding industry authority under an agreement mentioned in section 40;
  - (c) payments for borrowings by the authority;
  - (d) investments by the authority;
  - (e) other payments authorised under this Act.

### **42            Proposed budget and budget reports**

- (1) The authority must give the Minister the details of its proposed budget for each financial year at least 30 days before the start of the financial year.

- (2) The proposed budget must be approved by the Minister.
- (3) The authority must give the Minister a report on the authority's budget for each financial year.
- (4) The report is to be given when, and in the way, the Minister requires the report.

### **43 Actuarial investigation of funds**

- (1) At least every 2 years, but otherwise as required by the board, the authority must investigate the adequacy of—
  - (a) the authority's funds; and
  - (b) the levy percentage prescribed by section 85.
- (2) For subsection (1), the board must appoint a person (an *actuary*) who is recognised as an actuary and is appropriately qualified to carry out the investigation.
- (3) The actuary must—
  - (a) conduct the investigation and report the outcome of the investigation to the authority after the investigation is finished; and
  - (b) state in the report an opinion about whether the rate of levy should be reduced, increased or stay the same.
- (4) As soon as practicable after the authority receives the report, the authority must give the report to the Minister with the authority's recommendations on—
  - (a) the actuary's stated opinion; and
  - (b) whether the funds available are adequate to perform the authority's functions.
- (5) This section does not limit the authority's ability to make other inquiries about whether the authority's funds and the levy percentage are adequate.

## **Part 4                      Registers**

### **Division 1                      Registration of workers**

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

The authority must keep a register of individuals who are workers in the community services industry (the *register of workers*).

#### **45                      Application for registration as a registered worker**

- (1) An individual may apply for registration on the register of workers.
- (2) The application must be in the approved form.
- (3) The authority may, by notice, ask the applicant to do any of the following things within a reasonable time stated in the notice—
  - (a) give further information or documents relevant to the application that the authority reasonably requires to decide the application;
  - (b) verify information or documents forming part of the application including by statutory declaration.
- (4) The authority may refuse to grant the application if the applicant, without reasonable excuse, does not give or verify the information or documents within the stated time.

#### **46                      Authority to decide application**

- (1) The authority must—
  - (a) consider the application;
  - (b) decide to either—
    - (i) grant the application and register the applicant on the register of workers; or



- (ii) refuse to grant the application.
- (2) If the authority decides to grant the application, the authority must give the applicant notice of the decision stating the applicant's registration day and registration number.
- (3) If the authority decides to refuse the application, the authority must give the applicant an information notice for the decision.

#### **47 Authority may register worker without application**

- (1) The authority may, without application from an individual, decide to register the individual on the register of workers if—
  - (a) the authority has received information demonstrating the individual is, or was, a worker; and
  - (b) the authority is satisfied that the individual is, or was, a worker.
- (2) If the authority decides to enter the individual's name in the register the authority must give the individual an information notice for the decision stating the individual's registration day and registration number.

#### **48 Information to be entered in register of workers**

- (1) The authority must enter the following information about an individual registered in the register of workers—
  - (a) the individual's name, date of birth and residential address;
  - (b) the day (the *registration day*) the individual starts being a registered worker;
  - (c) a number (the *registration number*) that identifies the individual;
  - (d) the amount of the individual's entitlement to long service leave;
  - (e) for an individual who stops performing community services work, other than an individual whose

registration is cancelled under section 52—the day the individual stopped performing the work.

- (2) The authority may also enter any other information in the register it considers necessary for the administration of this Act.

#### **49 Determining individual's registration day**

- (1) For section 48(1)(b), the registration day for an individual is—
- (a) if the individual's application under section 45 is granted—the day the authority receives the application; or
  - (b) if the authority receives information mentioned in section 47 demonstrating the individual is a worker—the day the authority receives the information; or
  - (c) if the authority is satisfied the individual was a worker for a period before the day mentioned in paragraph (a) or (b)—the day decided by the authority to be the day the period started.
- (2) For subsection (1)(c), the authority must not decide a day earlier than—
- (a) the start of the financial year that is the second last full financial year before the individual's proposed registration day, unless the authority is satisfied special circumstances exist; and
  - (b) in any event—1 July 2020.

*Examples for subsection (2)(a)—*

- 1 An individual applies to become a registered worker on 1 February 2024. The registration day must not be earlier than 1 July 2021.
- 2 The authority receives a return from an employer for a worker on 1 July 2024. The registration day must not be earlier than 1 July 2022.

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## **50 Other information requested for the register of workers**

- (1) The authority may—
  - (a) ask an entity to give the authority information relevant to the registration of a registered worker; and
  - (b) if the information is given to the authority—enter the information for the registered worker in the register of workers.
- (2) Without limiting subsection (1)(a) the request may be made to the employer who engaged the registered worker in a reciprocating State.

## **51 Show cause notice before cancellation**

- (1) This section applies if the authority is proposing to cancel an individual's registration under section 52.
- (2) The authority must give the individual a notice stating—
  - (a) that the authority proposes to cancel the individual's registration; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the individual may, within 120 days after the notice is given, give the authority a written response to the proposed cancellation.
- (3) The authority must consider the individual's response before deciding whether to cancel the individual's registration.

## **52 Cancellation of registration**

- (1) The authority may cancel an individual's registration if it is satisfied any of the following circumstances apply—
  - (a) the individual is not and has not been a worker;
  - (b) the individual has not, for at least 4 consecutive years, been credited with service in the register of workers or had service recorded under a corresponding law;

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- (c) the individual's application to become registered should have been refused because information provided in the application was false or misleading;
  - (d) the individual dies and the individual's personal representative is not entitled to apply for a payment under section 72(4).
- (2) Also, if a payment for long service leave is made to an individual under section 72(4), the authority must immediately cancel the individual's registration on the register of workers.
- (3) If the authority cancels an individual's registration, it must give the individual, or the individual's personal representative, an information notice for the decision.
- (4) When the individual's registration is cancelled—
- (a) the authority must enter on the register of workers that the individual is not a registered worker; and
  - (b) the individual, or the individual's personal representative, is not entitled to apply for or be paid long service leave for any days of service credited to the individual in the register at the time of the cancellation.
- (5) This section does not prevent an individual mentioned in subsection (1)(a), (b) or (c) from subsequently becoming a registered worker.

## **Division 2                      Registration of employers**

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

The authority must keep a register of entities that are employers in the community services industry (the *register of employers*).

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## **54 Application for registration as a registered employer**

- (1) An entity, other than an entity mentioned in section 9(1)(b), must apply for registration on the register of employers within 28 days after becoming an employer.

Maximum penalty—40 penalty units.

- (2) An entity mentioned in section 9(1)(b) may apply for registration on the register of employers.
- (3) The application must include the following information—
- (a) the entity's name;
  - (b) any trading name of the entity;
  - (c) the entity's ABN, if any;
  - (d) the address of the entity's principal place of business;
  - (e) any other business address of the entity;
  - (f) if the entity is a corporation—
    - (i) the address of the corporation's registered office; and
    - (ii) the corporation's ACN;
  - (g) any name under which the entity is or has been operating in the community services industry;
  - (h) any place a record mentioned in section 70 may be inspected during normal business hours.
- (4) The authority may, by notice, ask the applicant to do the following things within a reasonable time stated in the notice—
- (a) give further information or documents relevant to the application;
  - (b) verify information or documents forming part of the application including by statutory declaration.
- (5) If the applicant is an entity mentioned in section 9(1)(a), (c) or (d), the applicant must comply with a request made under subsection (4) within the stated time, unless the applicant has a reasonable excuse.

Maximum penalty—40 penalty units.

- (6) If the applicant is an entity mentioned in section 9(1)(b) and does not comply with the request made under subsection (4) within the stated time, the application is taken to be withdrawn.

## **55 Court order about application**

- (1) If an entity contravenes subsection (2) or section 54(1), in addition to imposing a penalty, a court may order the entity to, within a stated time, apply to the authority in the way required by section 54 to become a registered employer.
- (2) An entity against whom an order under subsection (1) has been made must comply with the order, unless the entity has a reasonable excuse.

Maximum penalty for subsection (2)—40 penalty units.

## **56 Authority to decide application**

- (1) The authority must—
  - (a) consider the application; and
  - (b) decide to either—
    - (i) grant the application; or
    - (ii) refuse to grant the application.
- (2) If the authority decides to grant the application, the authority must give the applicant notice of the decision.
- (3) If the authority refuses to grant the application, the authority must give the applicant an information notice for the decision.

## **57 Information to be entered in register of employers**

- (1) The authority must enter the day an entity became registered as an employer on the register of employers.

- (2) The authority may also enter any other information in the register the authority considers necessary for the administration of this Act.

## **58 Employer to give notice of change to information given**

A registered employer must give notice to the authority about any change to the information given to the authority under section 54(3) or (5) within 28 days after the change happens.

Maximum penalty—40 penalty units.

## **59 Authority may require information or documents from employer**

- (1) This section applies if the authority believes an entity is or was an employer, but the entity is not a registered employer.
- (2) The authority may, by notice given to the entity, require the entity to give the authority the information or documents stated in the notice that are necessary to enable the authority to decide whether the entity is or was an employer.
- (3) The notice may state a reasonable time within which the information or documents must be given to the authority.
- (4) The entity must comply with the notice within the stated time, unless the entity has a reasonable excuse.

Maximum penalty—40 penalty units.

- (5) If the entity is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.
- (6) If an entity has contravened subsection (4), in addition to imposing a penalty, a court may make another order (the *other order*) the court considers appropriate.
- (7) The entity must comply with the other order, unless the entity has a reasonable excuse.

Maximum penalty—40 penalty units.

- (8) If the authority decides the entity is an employer, the authority must—
  - (a) register the entity in the register of employers; and
  - (b) give the entity an information notice for the decision.

## **60 Cancellation of registration**

- (1) A registered employer may, by notice, apply to the authority for cancellation of the employer's registration if—
  - (a) the registered employer is an entity mentioned in section 9(a), (c) or (d) and the employer stops engaging workers to perform community services work for the employer; or
  - (b) the person is an individual mentioned in section 9(b) and the individual stops providing community services work.
- (2) The authority must consider the application and decide to either—
  - (a) grant the application and cancel the employer's registration; or
  - (b) refuse to grant the application.
- (3) If the authority decides to grant the application, the authority must—
  - (a) give the employer a notice for the decision; and
  - (b) enter on the register of employers that the employer is not a registered employer.
- (4) If the authority refuses to grant the application, the authority must give the employer an information notice for the refusal.



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## Part 5 **Service credits, returns, payments and records**

### **61 Meaning of *engagement period* for a worker**

- (1) An ***engagement period***, for a worker, is a period that—
  - (a) starts on the day a person is engaged by an employer as a worker; and
  - (b) ends on the day the person stops being engaged by an employer as a worker.
- (2) For subsection (1), it is not relevant whether the employer who engages the person as a worker is the employer who stops engaging the person as a worker.
- (3) The ***engagement period***, for a worker, includes any day that the person who is or was a worker did not work because—
  - (a) the person was dismissed by the person's employer for the period to ensure the person did not take long service leave during the person's employment by the employer; or
  - (b) the person—
    - (i) sustained an injury within the meaning of the *Workers' Compensation and Rehabilitation Act 2003*, section 32; and
    - (ii) the person could not perform work for the employer because of the injury.

### **62 Crediting service**

- (1) If a worker performs any community services work in a return period, the worker must be credited in the register of workers with 1 day of service for each day in the return period, whether or not the worker performed community services work on a particular day.

*Examples—*

- 1 If a return period is 92 days and a worker only performs community services work on 1 day each week during the 92 day period, the worker must be credited with 92 days of service in the register of workers for the return period, even though the worker only performed community services work on 13 of the days.
  - 2 If there are 4 return periods during a worker's engagement period, and the worker only performs community services work during 3 of the return periods, the worker must be credited with service for the total number of days in each of the 3 return periods.
- (2) However, a worker must not be credited in a return period for a day that is not part of an engagement period for the worker.

*Example—*

If a worker stops being engaged by an employer on a Monday and is not engaged by another employer to perform community services work until the following Thursday, the worker must not be credited in the register of workers with service for the intervening Tuesday and Wednesday.

- (3) A worker mentioned in section 61(3)(b) must be credited with service as if the worker had performed community services work from the day of injury until whichever of the following circumstances happen first—
- (a) a period of 6 months ends after the day of the injury;
  - (b) the worker engages in employment.

## **63 Limitations on crediting service**

- (1) A person must not be credited in the register of workers with a day of service unless the day is on or after the person's registration day.
- (2) A worker must not be credited in the register of workers with more than 365 days in a financial year, even if a particular financial year has 366 days.

## **64 Notice to registered workers about service credits**

- (1) This section applies if an individual was a registered worker on 30 June of a financial year.

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- (2) The authority must give the individual a notice stating—
    - (a) the number of days of service, as shown in the register of workers, the individual was credited with for the financial year; and
    - (b) the total number of days of service that the individual was credited with from the day the individual became a registered worker to the end of the financial year; and
    - (c) the total amount of ordinary wages paid in the financial year for community services work performed by the individual.
  - (3) The authority is taken to have complied with subsection (2) if the authority gives the individual a notice stating that the individual may access the authority's website to obtain the information mentioned in subsection (2) in relation to the individual.

## **65 Employer must give return**

- (1) Within 14 days after the end of a return period, an entity who is or was an employer during the return period must give the authority a return in the approved form for the period.  
Maximum penalty—40 penalty units.
- (2) The authority may extend the period mentioned in subsection (1) if the authority is satisfied the extension is reasonable in all the circumstances.
- (3) For each worker engaged by the entity during the return period, the return must include—
  - (a) the total amount of ordinary wages paid by the entity to the worker during the period for community services work performed by the worker; and
  - (b) if the worker's engagement with the entity began during the period—the day the engagement period for the worker began; and

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- (c) if the worker's engagement with the entity ended during the period—the day the engagement period for the worker ended; and
- (d) any other information prescribed by regulation.

Maximum penalty—40 penalty units.

- (4) If asked by the authority, the entity must verify the information contained in the return in the way asked by the authority including by statutory declaration.

Maximum penalty—40 penalty units.

- (5) An entity must give notice to the authority about a change to information mentioned in subsection (3) within 14 days after the change happens.

Maximum penalty—40 penalty units.

- (6) In this section—

*worker*, for an entity for a particular return period, does not include—

- (a) a worker who was not recorded as a worker in the entity's return for the return period immediately before the particular return period; and
- (b) a worker who performed work for the entity for less than 5 days during the particular return period.

## **66 Payments of levy for return period**

- (1) This section applies to an entity who is or was an employer during a return period.
- (2) Within 14 days after the end of the return period, the entity must pay the authority the amount of the levy payable for each of the entity's workers for the return period.

Maximum penalty—60 penalty units.

- (3) The authority may extend the period of time mentioned in subsection (2) if the authority is satisfied the extension is reasonable in all the circumstances.

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- (4) If the entity must pay the authority additional amounts stated in an information notice given to the employer under section 67(3), the entity must pay the stated amounts—
- (a) within 14 days after receiving the information notice; or
  - (b) if an application for internal review of the decision, or an appeal, under part 8 is lodged against the payment of the additional amounts—within 14 days after the application is withdrawn or the liability to pay the additional amounts being finally confirmed.

Maximum penalty—60 penalty units.

- (5) If an entity contravenes subsection (2) or (4), in addition to imposing a penalty, a court may order the entity to pay the authority an amount payable under the subsection.
- (6) The amount may be recovered by the authority as a debt owed by the entity.
- (7) In this section—
- worker*, for an entity for a particular return period, does not include—
- (a) an individual who was not recorded as a worker in the employer’s return for the return period immediately before the particular return period; and
  - (b) an individual who performed work for the employer for less than 5 days during the particular return period.

## **67 Decisions about ordinary wages in returns**

- (1) This section applies if the authority suspects the ordinary wages stated in a return (the *return amount*) given to the authority by an employer do not accurately reflect the amount of ordinary wages for a particular worker, or all of the workers, engaged by the employer in the return period.
- (2) The authority may decide the return amount for the return period is either reasonable or not reasonable.

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- (3) If the authority decides the return amount is not reasonable, the authority must give the employer an information notice for the decision.
- (4) The information notice must state the following additional information—
  - (a) the amount of ordinary wages for the worker or workers for the return period that the authority decides is reasonable;
  - (b) the amount—
    - (i) representing the difference between the levy paid for the return amount and the levy that should have been paid for the amount of ordinary wages decided under paragraph (a); and
    - (ii) for which the employer is liable to pay under sections 69(1) and (3) and 88(1).
- (5) The amount required to be paid under subsection (4)(b) may be recovered by the authority as a debt owed by the employer.

## **68 Employer may apply for exemption from lodging return**

- (1) An entity may apply to the authority for an exemption from the requirement to give a return under section 65 in relation to an individual who is or was engaged by the entity as a worker.
- (2) The application must be in the approved form.
- (3) The authority may decide to give the exemption if the authority is satisfied—
  - (a) the entity is an entity mentioned in section 9(1)(a), (c) or (d) and no longer engages the individual to perform community services work; or
  - (b) the employer is an individual mentioned in section 9(1)(b) who stops providing community services; or

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- (c) the employer complies with, or makes contributions in relation to long service leave for the individual under a corresponding law.
  - (4) The authority may decide to revoke an exemption given under subsection (3) if the authority is satisfied the exemption should no longer be given.
  - (5) If the authority decides to refuse to give an exemption under subsection (1), or revokes an exemption under subsection (4), the authority must give the entity an information notice for the decision.

## **69 Civil penalty for failure to give return or pay levy**

- (1) If an entity required to give a return to the authority under section 65(1) fails to comply with the section, the entity is liable to pay the authority a civil penalty.
- (2) For subsection (1), the amount of the civil penalty is an amount equal to the monetary value, at the time of the initial failure, of 1 penalty unit for each month, or part of a month, from the day after the last day the return should have been given until the day the return is given.
- (3) If an entity required to pay an amount payable to the authority under section 66(2) fails to comply with the section, the entity is liable to pay the authority a civil penalty.
- (4) For subsection (3), the amount of the civil penalty is an amount equal to the monetary value, at the time of the initial failure, of 1 penalty unit for each month, or part of a month, from the day after the last day the amount should have been paid until the day when it is paid.
- (5) However, if during the 4 return periods prior to the failure, the entity has also, on at least 1 other occasion, failed to comply with section 65(1) or 66(2), the amount of the civil penalty is double the amount of the civil penalty mentioned in subsection (2) or (4).
- (6) The amount payable as a civil penalty under this section—
  - (a) may be recovered by the authority as a debt; and

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- (b) can not be more than an amount equal to the monetary value, at the time of the initial failure, of 40 penalty units.
- (7) On application by the entity or on the authority's own initiative, the authority may remit all or part of an amount payable as a civil penalty if it is satisfied—
  - (a) the entity did not directly or indirectly cause the circumstances of the contravention; or
  - (b) it would be reasonable in all the circumstances to make the remission.
- (8) If an entity contravenes section 65(1), in addition to imposing a penalty, a court may order the entity to—
  - (a) pay the authority the amount of the civil penalty mentioned in subsection (2) or (5) payable to the day of the order and an amount of interest calculated under section 88(1) in relation to the amount; and
  - (b) file a return for the relevant period.
- (9) If an entity contravenes section 66(2) or (4), in addition to imposing a penalty, a court may order the entity to pay the authority—
  - (a) all or part of the amount payable under the subsection; and
  - (b) in relation to an offence against section 66(2)—the amount of the civil penalty mentioned in subsection (4) or (5) payable to the day of the order and an amount of interest calculated under section 88(1) in relation to the amount.
- (10) The amount stated in an order under subsection (8)(a) or (9) may be recovered by the authority as a debt owed by the entity.

## **70 Employer to keep record for each worker**

- (1) An entity that is or was an employer must keep a record of the following information for each of the entity's workers—



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- (a) the worker's name, date of birth and residential address;
  - (b) if the worker is a registered worker, the worker's registration number;
  - (c) the number of days the worker was engaged by the employer;
  - (d) the ordinary wages for the worker for each day worked;
  - (e) the day the worker's engagement with the employer started;
  - (f) details of long service leave granted by the employer to, or taken by, the worker;
  - (g) details of a payment made to the worker instead of granting long service leave to the worker;
  - (h) if the worker is no longer engaged to perform community services work for the employer—the day the worker stopped being engaged to perform the work for the employer.

Maximum penalty—40 penalty units.

- (2) The entity must keep the record for at least 6 years after the last entry is made in it.

Maximum penalty—40 penalty units.

## Part 6 Long service leave

### Division 1 Preliminary

#### 71 Definitions for part

In this part—

*classification level*, of a registered worker, means—

- (a) the worker's classification level under an industrial instrument the worker is engaged under; or

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- (b) otherwise—the classification level of the worker prescribed by regulation.

*moderated wages*, of a registered worker for a return period, means the ordinary wages for the worker during the return period divided by the annual rate of pay that is payable for the classification level of the worker at the end of the return period.

## **Division 2                      Application for and entitlement to long service leave**

### **72            Application for long service leave entitlement by registered worker**

- (1) A registered worker who has credit for service in the register of workers may apply to the authority for payment for all or part of the registered worker's long service leave entitlement.
- (2) A registered worker may be paid for all or part of the registered worker's long service leave entitlement, without taking long service leave, if—
- (a) an industrial instrument provides for the registered worker to be paid instead of taking the long service leave; and
- (b) the registered worker has entered into a written agreement with each of the following entities to be paid all or part of the entitlement—
- (i) the authority;
- (ii) the registered worker's employer.
- (3) If the registered worker has not entered into the agreement under subsection (2)(b), a payment may be made only if—
- (a) the registered worker has accrued 2,555 days of service in the register of workers; and
- (b) the industrial commission has ordered the payment under the *Industrial Relations Act 2016*, section 110(3).

- (4) If a registered worker has died and, immediately before the worker's death, the registered worker had a long service leave entitlement, the registered worker's personal representative may apply to the authority for payment for all or part of the entitlement.
- (5) An application under subsection (1) or (4) must be in the approved form.
- (6) If the authority decides to refuse payment for an application under subsection (1) or (4), the authority must give the applicant an information notice for the decision.

### **73 Entitlement to long service leave**

- (1) If a registered worker has been credited with at least 2,555 days of service in the register of workers, the registered worker's entitlement to long service leave is—
  - (a) for each period of 2,555 days of service—6.1 weeks; and
  - (b) for each day of service not included in a period of service under paragraph (a)—the proportion of 6.1 weeks that the number of days of service bears to 2,555 days.
- (2) Long service leave does not include a public holiday that happens during the applicant's long service leave.

## **Division 3 Calculation and payment of long service leave**

### **74 Amount of long service leave payment**

- (1) Subject to sections 73 and 75, the authority must pay an applicant for payment of a long service leave entitlement an amount for long service leave calculated using the formula—

$$S \times 0.867 \times \frac{R}{52}$$

where—

**S** means the amount calculated by adding together each amount of the registered worker's moderated wages for each return period in which the registered worker was credited with service in the register of workers.

**R** means the annual rate of pay that is payable for the classification level of the registered worker at the time the application is made.

- (2) The authority must pay the applicant for a public holiday that happens during the applicant's long service leave.
- (3) Other than the last payment for a long service leave entitlement that may be 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.

*Example of a last payment for a long service leave entitlement—*

If a registered worker stops performing community services work and is entitled to 4 days of long service leave, the authority must pay the applicant the long service leave entitlement.

## **75 Long service leave not payable in particular cases**

A registered worker is not entitled to be paid for a long service leave entitlement for a day of service that is credited to the registered worker in the register of workers if a payment for the entitlement, or a payment for the day of service under section 76 or 77, has already been made under this Act, another Act or an industrial agreement.

## **76 Payments to employers after registered worker paid long service leave**

- (1) This section applies if—
  - (a) a registered worker has been paid all or part of the worker's long service leave entitlement by an employer for a period when the worker was performing community services work; or

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- (b) a registered worker has died and the worker's personal representative has been paid all or part of the worker's long service leave entitlement by an employer for the period when the worker was performing community services work.
- (2) On application by the employer the authority must pay the employer an amount calculated using the formula—

$$S \times 0.867 \times \frac{R}{52}$$

where—

*S* means the amount calculated by adding together each amount of the registered worker's moderated wages for each return period in which the registered worker was credited with service in the register of workers.

*R* means the annual rate of pay that was payable for the classification level of the registered worker at the time the long service leave entitlement was paid by the employer.

- (3) The application must be—
- (a) in the approved form; and
  - (b) made within—
    - (i) 3 months after the entitlement was paid; or
    - (ii) a longer period allowed by the authority, of not more than 2 years, after the entitlement was paid.
- (4) However, under this section, the employer is not entitled to be paid—
- (a) an amount that is more than the amount paid by the employer for the registered worker for the period mentioned in subsection (1); or
  - (b) an amount for a period the registered worker was engaged by the employer if the registered worker has been paid the registered worker's long service leave entitlement for the period by someone other than the employer.

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- (5) Despite this or another section, an employer of a worker whose registration has been cancelled is entitled to be paid an amount the employer would have been entitled to be paid under this section if the worker's registration had not been cancelled.
- (6) An employer is entitled to be paid for a public holiday that happens during the registered worker's long service leave.

## **77 Payment to employers before registered worker paid long service leave**

- (1) This section applies if an employer proposes to pay all or part of a registered worker's long service leave entitlement for a period the registered worker is likely to be engaged by the employer.
- (2) The employer may apply to the authority to be paid all or part of the registered worker's long service leave entitlement.
- (3) The application must be—
  - (a) in the approved form; and
  - (b) made at least 1 month before the employer proposes to pay the registered worker all or part of the registered worker's long service leave entitlement.
- (4) The authority must consider the application and decide to either—
  - (a) grant the application and give the applicant notice of the decision; or
  - (b) refuse to grant the application and give the applicant an information notice for the decision.
- (5) If the authority grants the application the authority must pay the employer an amount calculated using the formula—

$$S \times 0.867 \times \frac{R}{52}$$

where—

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**S** means the amount calculated by adding together each amount of the registered worker's moderated wages for each return period in which the registered worker was credited with service in the register of workers.

**R** means the annual rate of pay that is payable for the classification level of the registered worker at the time the application is made.

- (6) Within 14 days after the end of the registered worker's period of long service leave, the employer must provide the authority with documentary evidence satisfactory to the authority that the registered worker was paid the amount that was paid to the employer under subsection (5).

Maximum penalty—60 penalty units.

- (7) If the registered worker was not paid the amount that was paid to the employer under subsection (5), the employer must give the authority notice of the amount actually paid.
- (8) If the amount paid by the employer to the registered worker is less than the amount paid by the authority to the employer, the authority must give the employer a notice stating—
- (a) the amount of the difference between the amounts paid by the authority and the employer; and
  - (b) that the employer must pay the difference to the authority.
- (9) The employer must pay the amount stated in the notice under subsection (8) within 28 days after the notice is given to the employer.

Maximum penalty—60 penalty units.

## **78 If employer unable to pay entitlement**

- (1) This section applies if the authority is satisfied —
- (a) that—

- (i) a registered worker is entitled to long service leave, other than under this Act, for a period when the worker was engaged by an employer; or
    - (ii) a registered worker was, immediately before the worker's death, entitled to long service leave, other than under this Act, for a period when the worker was engaged by an employer; and
  - (b) the employer who is liable to pay the long service leave entitlement can not pay the full amount of the entitlement.
- (2) The employer may pay the authority the amount (the ***paid amount***) that represents the amount of the entitlement, less an amount the employer would have been entitled to be paid as calculated under section 76 if the employer had paid the full amount of the entitlement to the registered worker or the personal representative of the registered worker.
- (3) If the employer pays the paid amount to the authority—
- (a) the authority must pay the amount of the registered worker's entitlement mentioned in subsection (1)(a) to—
    - (i) the registered worker; or
    - (ii) if the registered worker has died—the personal representative of the registered worker; and
  - (b) the employer is taken to have complied with whichever of the following sections applies to the employer for the amount of the entitlement the employer is required to pay the registered worker—
    - (i) the *Industrial Relations Act 2016*, chapter 2, part 3, division 9, subdivision 5;
    - (ii) the *Industrial Relations Act 2016*, section 105.

## 79 Authority may pay if employer insolvent

- (1) This section applies if—



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- (a) the employer of a registered worker is or becomes an insolvent under administration, or a body corporate that is taken to be under external administration; and
  - (b) the registered worker has a long service leave entitlement.
- (2) The authority may pay the registered worker, or the worker's personal representative, the difference between—
- (a) the amount of the registered worker's long service leave entitlement; and
  - (b) an amount the worker or personal representative has received from or on behalf of the employer for the registered worker's long service leave entitlement.
- (3) In this section—
- external administration* see Corporations Act, schedule 2, section 5-15.

## **80 Entitlement if credit for service accrued elsewhere**

- (1) A registered worker may apply to the authority for payment for long service leave calculated in a way stated in a corresponding law of a reciprocating State if—
- (a) the worker—
    - (i) has, for a period, been engaged in performing community services work in the reciprocating State, or partly in the reciprocating State and partly in Queensland; and
    - (ii) because of the length of the period, is entitled under the corresponding law to a payment for long service leave; and
  - (b) the person would, if the person had engaged in the work in Queensland for the entire period, have had a long service leave entitlement under this Act.
- (2) If a registered worker has died and, immediately before the worker's death, the worker was entitled to apply for payment

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for an entitlement under subsection (1), the worker's personal representative may apply to the authority for the payment.

- (3) The authority must pay the applicant the amount of the entitlement calculated in the way stated in the corresponding law if the authority is—
  - (a) satisfied the applicant is entitled under the corresponding law and this Act to the payment; and
  - (b) authorised by the corresponding authority to make the payment.
- (4) The application for the payment may be included in an application under section 72.
- (5) If the authority makes a payment under subsection (3) the authority must take all reasonable steps to ensure it is reimbursed by the corresponding authority for the payment.
- (6) An application made under subsection (1) or (2) must be in the approved form.
- (7) If the authority decides to refuse payment for the application, the authority must give the applicant an information notice for the decision.

## **81 Entitlement if corresponding authority pays**

- (1) If, under a corresponding law, a corresponding authority pays a person an amount that, but for the payment, could have been payable for a long service leave entitlement under this Act—
  - (a) the obligation of the authority to make the payment to the person for the entitlement is discharged; and
  - (b) the authority must reimburse the corresponding authority if the authority is notified about the payment and is satisfied the payment was properly made.
- (2) The payment of an amount under subsection (1)(b) must be made in the way stated in an agreement entered into under section 119 for the reciprocating State in which the corresponding authority is established.

## **82 Payment may be deferred**

- (1) A person who applies for a payment for a long service leave entitlement, or a payment for long service leave under a corresponding law, may ask the authority to defer the payment.
- (2) The authority may defer the payment for a period agreed between the person and the authority.

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

Despite the authority having paid, paying, or being liable to pay, for a long service leave entitlement under this Act to or for a registered worker, the authority is not—

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

# **Part 7 Levies**

## **84 Imposition of levy**

A long service leave levy is imposed on the ordinary wages for each worker in the community services industry.

## **85 Amount of levy**

For each worker, the amount of the levy is equal to the percentage, prescribed by regulation, of the ordinary wages for the worker.

**86 Authority may require information or documents if levy not paid**

- (1) This section applies if the authority believes all or part of the levy has not been paid under section 66(2) in relation to the ordinary wages for a worker.
- (2) The authority may, by notice, require a person the authority believes has information or documents about the ordinary wages to give the authority the information or documents within a reasonable time stated in the notice.
- (3) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

- (4) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.
- (5) If a person contravenes subsection (3), in addition to imposing a penalty, a court may make another order (the *other order*) the court considers appropriate.
- (6) The person must comply with the other order unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

**87 Additional levy payments**

- (1) This section applies if the levy payable in relation to the ordinary wages for a worker is more than the amount an employer has paid to the authority as the levy for the worker.
- (2) The authority must give the employer a notice requiring the employer to pay the amount (the *unpaid amount*) decided by the authority that the authority believes has not been paid by the employer.
- (3) Within 14 days after receiving the notice, the employer must pay the authority the unpaid amount stated in the notice.

Maximum penalty—60 penalty units.

- (4) If an employer contravenes subsection (3), in addition to imposing a penalty, a court may order the employer to pay the authority the unpaid amount.
- (5) The unpaid amount stated in the order may be recovered by the authority as a debt owed by the employer.

## **88 Interest on levy and extension of time for payment of levy**

- (1) A levy amount not paid at or before the time for its payment bears compound interest at the rate prescribed by regulation.
- (2) Interest forms part of, and may be recovered as, an unpaid levy.
- (3) On application by an employer and only if the authority is satisfied there are special circumstances, the authority may decide—
  - (a) the time for payment of all or part of a levy amount be changed to a later stated time; or
  - (b) the amount of interest payable under subsection (1) be waived or reduced by a stated amount.
- (4) Subsection (3) applies despite sections 66 and 86.

## **89 Recovery of levy amount**

- (1) A levy amount payable to the authority is a debt payable to it.
- (2) A levy amount that is not paid may be sued for and recovered by, or for, the authority.
- (3) If it appears to the authority that a levy amount has not been paid in full by an employer, the authority may make an assessment of the amount owing.
- (4) The authority must give a notice of the assessment to the employer.

## 90 Penalties no relief from levy

A payment of a penalty for an offence against this Act or of a civil penalty under section 69(1) or (3) does not relieve a person from liability to pay a levy or a levy amount to which the person would otherwise be liable.

# Part 8 Reviews and appeals

## Division 1 Purpose of part

### 91 Purpose

The purpose of this part is to provide for the review of, and appeals from, the following decisions (each an *original decision*)—

- (a) a decision made by the authority in relation to—
  - (i) a matter for which this Act provides an application can be made; or
  - (ii) a levy or levy amount;
- (b) an entry in the register of workers made by the authority;
- (c) an entry in the register of employers made by the authority;
- (d) a notice or an information notice given by the authority.

## Division 2 Internal review of original decisions

### 92 Application for internal review

- (1) A person who is aggrieved by an original decision (an *aggrieved person*) may apply to the authority for a review of the decision (an *application for review*).
- (2) The application for review must be—

- (a) in the approved form; and
  - (b) made—
    - (i) if the original decision relates to information contained in a notice given to the aggrieved person under section 64—within 6 months after the notice is given to the person; or
    - (ii) if the original decision relates to an entry in the register of workers—at any time; or
    - (iii) otherwise—within 45 days after a notice or an information notice for the decision is given; and
  - (c) supported by enough information to enable the authority to decide the application.
- (3) However, if the authority is satisfied there are special circumstances, the authority may, before the end of the stated period mentioned in subsection (2), extend the time for making the application.
- (4) If the authority decides the employer of, or a worker for, the aggrieved person may have an interest in the application, the authority must give notice of the application (the *review notice*) to the employer or worker (the *recipient*).
- (5) The review notice must state—
- (a) any information provided under subsection (2)(c); and
  - (b) that submissions on the application may be made to the authority before a stated day at least 14 days after the notice is given to the recipient.
- (6) If the recipient makes a submission, the authority must give a copy of the submission to the aggrieved person and allow the aggrieved person at least 7 days after the copy is given to make a further submission to the authority.
- (7) An application for review of an original decision does not stay the decision.

### **93 Internal review of original decision**

- (1) Within 45 days after receiving the application for review, the authority must—
  - (a) review the original decision; and
  - (b) consider the application and any submissions properly made; and
  - (c) make a decision (the *reviewed decision*) to—
    - (i) confirm or revoke the original decision; or
    - (ii) vary the original decision in a way the authority considers appropriate; and
  - (d) give an information notice for the reviewed decision to the aggrieved person and any recipient of a review notice for the application.
- (2) However, the authority is taken to have refused the application for review if, within 45 days after receiving the application, the authority—
  - (a) does not give the aggrieved person an information notice for the reviewed decision; and
  - (b) has not asked the aggrieved person for further information about the application.
- (3) If the authority asks for further information about the review and does not give the aggrieved person an information notice for the reviewed decision, the authority is not taken to have refused the application for review until 60 days after the authority receives the application.
- (4) The application must not be dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision.
- (5) A defect in the information notice does not affect the person's right to appeal in relation to the matters dealt with in the information notice.



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## Division 3 Appeals to industrial magistrate

### 94 Who may appeal

- (1) A person may appeal a reviewed decision, or a deemed refusal under section 93(2) or (3), to an industrial magistrate.
- (2) The appeal must be started within 28 days after—
  - (a) if an information notice for the reviewed decision is given to the person—the day the information notice is given; or
  - (b) otherwise—the day the authority is, under section 93(2) or (3), taken to have refused the application for internal review.
- (3) In deciding an appeal, the industrial magistrate may—
  - (a) confirm the decision or refusal appealed against; or
  - (b) set aside the decision or refusal and substitute another decision; or
  - (c) set aside the decision or refusal and return the matter to the authority with directions the magistrate considers appropriate.
- (4) Without limiting the industrial magistrate's powers under the *Industrial Relations Act 2016*, the industrial magistrate has the same powers as the authority.
- (5) If the industrial magistrate substitutes another decision, the substituted decision is taken, for this Act, to be a decision of the authority, except that it is not an original decision or a reviewed decision.
- (6) The industrial magistrate may make an order about costs the magistrate considers just.

### 95 Starting appeal

- (1) An appeal to an industrial magistrate must be started by filing a notice of appeal with the clerk of the court of the

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Magistrates Court nearest to the place where the appellant lives or carries on business.

- (2) The notice of appeal must state—
  - (a) the decision or refusal appealed against; and
  - (b) the material facts relied on in support of the appeal; and
  - (c) the relief sought.
- (3) The clerk of the court must—
  - (a) arrange with an industrial magistrate a return day and time for the appeal; and
  - (b) insert the return day and time in the notice.
- (4) The return day must be at least 10 days after the day the notice is filed.
- (5) After the clerk of the court has inserted the return day and time in the notice of appeal, the appellant must serve a copy of the notice on the authority and any other party to the appeal at least 5 days before the return day.
- (6) In this section—

*return day* means the day the parties are to attend before an industrial magistrate about the appeal.

## 96 Directions

An industrial magistrate may issue directions about the conduct of the appeal.

## 97 Where appeal heard

- (1) An appeal to an industrial magistrate must be heard at the place the notice of appeal is filed unless—
  - (a) an industrial magistrate at the place directs the appeal may more conveniently be heard by an industrial magistrate at another place; or

- (b) the parties agree the appeal may more conveniently be heard by an industrial magistrate at another place.
- (2) The direction may be made on the application of a party or on the industrial magistrate's own initiative.
- (3) If a direction is made under subsection (1)(a) or the parties agree under subsection (1)(b), an industrial magistrate at the place must adjourn the appeal and send the appeal records to an industrial magistrate at the other place.

## 98 Attendance notice

- (1) An industrial magistrate may, by notice (*attendance notice*), require a person to attend at a hearing of the appeal at a stated time and place for 1 or more of the following reasons until the person is excused—
  - (a) to give evidence;
  - (b) to produce a stated document or thing;
  - (c) to establish a reasonable excuse claimed for a stated document or thing the person is required to produce.
- (2) A person given an attendance notice must not, unless the person has a reasonable excuse, fail to—
  - (a) attend the hearing; or
  - (b) continue to attend the hearing until excused; or
  - (c) produce a document stated in the notice.

Maximum penalty—40 penalty units.

## Division 4 Appeals to industrial court

### 99 Appeal

- (1) The authority or a person may appeal to the industrial court under the rules of court governing the practice of the court against a decision of an industrial magistrate in an appeal under section 94(1).

- (2) An appeal under subsection (1) is limited to—
- (a) error of law; or
  - (b) jurisdictional error.

## **Part 9 Authorised officers**

### **Division 1 Appointment**

#### **100 Authorised officers under part**

This part includes provision for the appointment of authorised officers and gives authorised officers particular powers.

#### **101 Functions of authorised officers**

An authorised officer has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

#### **102 General manager is an authorised officer**

- (1) The general manager is an authorised officer.
- (2) However, sections 104, 105, 106 and 109 do not apply to the general manager as an authorised officer.

#### **103 Appointment and qualifications**

The general manager may, by instrument in writing, appoint a person who is an authorised officer under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* as an authorised officer.

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## 104 Appointment conditions and limit on powers

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the authorised officer’s instrument of appointment; or
  - (b) a signed notice given to the authorised officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer’s powers.
- (3) In this section—

*signed notice* means a notice signed by the general manager.

## 105 When office ends

- (1) The office of a person as an authorised officer ends if any of the following things happen—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the authorised officer’s resignation under section 106 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.
- (3) In this section—

*condition of office* means a condition under which the authorised officer holds office.

## 106 Resignation

An authorised officer may resign by signed notice given to the general manager.

## **Division 2                      Identity cards**

### **107      Issue of identity card**

- (1) The general manager must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised officer; and
  - (b) contain a copy of the authorised officer’s signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **108      Production or display of identity card**

- (1) In exercising a power, as applied under this Act, in relation to a person in the person’s presence, an authorised officer must—
  - (a) produce the authorised officer’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place mentioned in the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, section 107(1)(b) or (2), as applied under division 3.

## 109 Return of identity card

If the office of a person as an authorised officer ends, the person must return the person's identity card to the general manager within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

## Division 3 Powers of authorised officers

### 110 Definitions

In this division—

*applied Act* means the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

*contract cleaning provisions* means the following provisions of the applied Act—

- (a) part 9, divisions 2, 3 and 4;
- (b) part 9, division 5, other than sections 134, 135 and 136.

### 111 Application of contract cleaning provisions

- (1) The contract cleaning provisions apply to—
  - (a) an authorised officer for performing the officer's functions under this Act; and
  - (b) a person in relation to whom an authorised officer exercises a power under the provisions; and
  - (c) a place in relation to which a power is exercised under the provisions.
- (2) For applying subsection (1)—
  - (a) a reference in the contract cleaning provisions to an authorised officer is taken to be a reference to an authorised officer under this Act; and

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- (b) a reference in the contract cleaning provisions to a function of an authorised officer under the applied Act is taken to be a reference to a function of an authorised officer under this Act; and
- (c) a reference in the contract cleaning provisions to exercising a power under the applied Act is taken to be a reference to exercising a power as applied under this Act; and
- (d) a reference in the contract cleaning provisions to a record kept under section 66 of the applied Act is taken to be a reference to a record kept under section 70 of this Act; and
- (e) a reference in the contract cleaning provisions to the way stated in section 104 of the applied Act is taken to be a reference to the way stated in section 108 of this Act; and
- (f) a reference in the contract cleaning provisions to the authority is taken to be a reference to the authority under this Act; and
- (g) a reference in the contract cleaning provisions to the general manager is taken to be a reference to the general manager under this Act; and
- (h) a reference in the contract cleaning provisions to an offence against the applied Act is taken to be a reference to an offence against this Act; and
- (i) a reference in the contract cleaning provisions to compliance with the applied Act is taken to be a reference to compliance with this Act.

## **Part 10 Proceedings for offences**

### **112 Proceedings for offences**

- (1) A proceeding for an offence against this Act is to be heard and decided summarily before an industrial magistrate.



- (2) A proceeding for the offence against this Act must start within the later of the following periods to end—
  - (a) 1 year after the offence was allegedly committed; or
  - (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence was allegedly committed.
- (3) An appeal against a decision of an industrial magistrate in a proceeding mentioned under subsection (1) must be made to the industrial court.
- (4) The *Industrial Relations Act 2016* applies to a proceeding mentioned in subsection (1) or (3).

### **113 Powers of industrial magistrate**

For this Act, an industrial magistrate has all the powers of an industrial magistrate under the *Industrial Relations Act 2016*.

### **114 Evidentiary certificates about returns**

- (1) In a proceeding under this Act, a certificate signed by the general manager is evidence of any of the following matters stated in the certificate—
  - (a) that the authority had, or had not, allowed a stated person an additional stated period to give the authority a return for a stated return period;
  - (b) that a stated person had, or had not, given to the authority a return for a stated return period on or before a stated date.
- (2) Unless the contrary is proved, a document purporting to be a certificate under subsection (1) is taken to be a certificate under the subsection.

## **115 Evidentiary certificates about levy payments**

- (1) In a proceeding under this Act, a certificate signed by the general manager is evidence of any of the following matters stated in the certificate—
  - (a) that a stated levy amount was payable by a stated person for a stated return period;
  - (b) that, on or before a stated date, a stated person had not paid to the authority a stated levy amount that was payable by the person for a stated return period;
  - (c) that, on a stated date, a stated person paid to the authority a stated levy amount that was payable by the person for a stated return period.
- (2) Unless the contrary is proved, a document purporting to be a certificate under subsection (1) is taken to be a certificate under the subsection.

## **116 Other evidentiary certificates**

- (1) In a proceeding under this Act, a certificate signed by the general manager is evidence of any of the following matters stated in the certificate—
  - (a) that 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 by the authority under this Act;
  - (b) that on a stated day, a stated person was or was not listed in the register of employers or the register of workers;
  - (c) that on a stated day, an application for registration under section 53 had, or had not, been received by the authority.
- (2) Unless the contrary is proved, a document purporting to be a certificate under subsection (1) is taken to be a certificate under the subsection.

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**117 Penalties to be paid to authority**

A penalty recovered as a result of a proceeding for an offence against this Act brought by the authority is payable to the authority.

**Part 11 Miscellaneous**

**118 Offence of improper disclosure of information**

- (1) A person must not, directly or indirectly, record or disclose information obtained in the administration of this Act unless—
- (a) the disclosure is for performing a function or exercising a power under this Act; or
  - (b) the disclosure is required for the administration of a corresponding law; or
  - (c) the information is disclosed with the consent of the person to whom the information relates; or
  - (d) the disclosure is authorised by the Minister; or
  - (e) the disclosure is otherwise required or permitted by law; or
  - (f) the disclosure is in a form that does not identify the person to whom the information relates.

Maximum penalty—40 penalty units.

- (2) Without limiting subsection (1), a person who receives information directly or indirectly from a reciprocating State is taken to have obtained the information for performing a function or exercising a power under this Act.
- (3) For subsection (1)(d), the Minister may, in writing, authorise a person to disclose information obtained in the administration of this Act for the purpose, and in the way, stated in the authority if the Minister considers it appropriate to do so.

### **119 Arrangements with other States**

- (1) For this Act, the Minister may enter into an agreement about making payments of long service leave to persons performing community services work in another State.
- (2) Without limiting the matters that may be provided for in the agreement, the agreement may provide for—
  - (a) the exchange of information, about credits and entitlements to payment, between the authority and a corresponding authority; and
  - (b) other matters relating to the payment of long service leave to persons covered by the agreement.
- (3) The agreement may be amended or repealed by a subsequent agreement.

### **120 Declaration about arrangements with other States**

- (1) A regulation may—
  - (a) declare a State for which an agreement under section 119 is in force to be a reciprocating State; and
  - (b) declare a law of the State to be a corresponding law for this Act.
- (2) A declaration under subsection (1)(b) must not be made unless the law of the other State provides for the payment of long service leave to or for persons who are or have been performing community services work in the other State.

### **121 General manager's power of delegation**

The general manager may delegate the general manager's functions and powers under this Act to an appropriately qualified person.

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## 122 Protecting officials from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the authority.
- (3) In this section—  
*official* means—
  - (a) the Minister; or
  - (b) a director; or
  - (c) the general manager; or
  - (d) an authorised officer; or
  - (e) another person involved in the administration of this Act, other than a person who is a prescribed person under the *Public Sector Act 2022*, section 267.

*Note—*

For protection from civil liability in relation to prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

## 123 Review of Act

- (1) The Minister must review this Act within 5 years after the commencement to decide whether its provisions remain appropriate.
- (2) The Minister must table a report about the review in the Legislative Assembly as soon as practicable after finishing the review.

## 124 Approved forms

The general manager may approve forms for use under this Act.

**125 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty of not more than 20 penalty units for a contravention of the regulation.

**Part 12 Transitional provision**

**126 Extended time for registration as an employer**

- (1) This section applies if an entity is an employer on the commencement of section 54 or becomes an employer within 28 days after the commencement.
- (2) Despite section 54(1), the person is not required to comply with the subsection until 90 days after the commencement.

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## **Schedule 1      Types of community services**

### section 7(1)

Aboriginal and Torres Strait Islander community services

accommodation support services

advocacy services

alcohol and other drug services

child safety and support services

community development services

community education services

community legal services

counselling services

disability emergency response services

disability support services

employment services

family and domestic violence services

family day care services

financial counselling services

foster care and out-of-home care services

home and community care services

homelessness support services

lesbian, gay, bisexual, transgender and intersex services

mental health services

Schedule 1

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migrant and multicultural support services

offenders transitioning services

respite services

seniors community support services

social housing services

violence prevention services

women's services

youth justice services

youth support services



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## Schedule 2 Dictionary

## section 5

***aggrieved person*** see section 92(1).

***application for review*** see section 92(1).

***applied Act***, for part 9, division 3, see section 110.

***approved form*** means a form approved by the general manager under section 124.

***authorised officer*** means the general manager or a person who holds office as an authorised officer under part 9, division 1.

***authority*** means the Community Services Industry (Portable Long Service Leave) Authority established under section 10.

***board*** means the board established under section 15.

***Building and Construction Industry Authority*** means the Building and Construction Industry (Portable Long Service Leave) Authority established under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

***chairperson*** means the person appointed as chairperson of the board under section 18(1)(a).

***classification level***, of a worker, for part 6, see section 71.

***community services*** see section 7(1).

***community services industry*** see section 6.

***Community Services Industry Authority*** means the authority.

***community services work*** see section 7(2).

***Contract Cleaning Industry Authority*** means the Contract Cleaning Industry (Portable Long Service Leave) Authority established under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

***contract cleaning provisions***, for part 9, division 3, see section 110.

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

***corresponding industry authority*** see section 40(3).

***corresponding law*** means a law declared to be a corresponding law under section 120(1)(b).

***deputy chairperson*** means the deputy chairperson of the board appointed under section 18(1)(b).

***director*** see section 18(1).

***employer*** see section 9.

***engaged*** includes employed or self-employed.

***engagement period***, for a worker, see section 61.

***general manager*** see section 36.

***industrial instrument*** means an industrial instrument under the *Industrial Relations Act 2016* or a federal industrial instrument.

***information notice***, for a decision, means a notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) whether or not the person may apply to a stated entity for a review of the decision or appeal against the decision;
- (d) if the person may apply for review or appeal against the decision—
  - (i) the entity to whom the application or appeal may be made; and
  - (ii) the day by which the application must be made or the appeal must be started.

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

***levy*** means the long service leave levy imposed under section 84.

***levy amount*** means each of the following amounts—

- (a) the amount of long service leave levy including an amount payable under section 67 or 85;
- (b) an additional amount payable in relation to the levy under section 69;
- (c) an amount payable as interest under section 88.

***long service leave entitlement***, for a registered worker, means the worker's entitlement to long service leave calculated under section 73(1).

***material personal interest***, of a director, see section 25(1).

***moderated wages***, of a registered worker for a return period, for part 6, see section 71.

***notice*** means written notice.

***ordinary wages***, for a person who is or has been a worker, means the amount of gross wages paid or payable to the person when the person was engaged as a worker and includes the following amounts—

- (a) any weekend and public holiday penalty rates earned by the person as a shift worker on normal rostered shifts forming the ordinary hours of duty, payable under the person's industrial agreement, other than when worked as overtime;
- (b) allowances relating to the person's work, payable under the person's industrial agreement, other than allowances for expenses incurred by, or for the use of, equipment or a motor vehicle provided by the person;
- (c) over-award payments;
- (d) any deductions from the gross wages, including any amount that is subject to salary sacrifice;
- (e) any other amount prescribed by regulation.

***original decision*** see section 91.

***reciprocating State*** means a State declared to be a reciprocating State under section 120(1)(a).

***registered employer*** means an entity registered in the register of employers.

***registered worker*** means an individual registered in the register of workers.

***register of employers*** see section 53.

***register of workers*** see section 44.

***registration day*** see section 48(1)(b).

***registration number*** see section 48(1)(c).

***return period*** means a period prescribed by regulation to be a return period.

***reviewed decision*** see section 93(1)(c).

***review notice*** see section 92(4).

***worker*** see section 8.