



Queensland

# **Contract Cleaning Industry (Portable Long Service Leave) Act 2005**

**Act No. 21 of 2005**





Queensland

# Contract Cleaning Industry (Portable Long Service Leave) Act 2005

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Queensland

## **Contract Cleaning Industry (Portable Long Service Leave) Act 2005**

### **Act No. 21 of 2005**

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

**[Assented to 19 May 2005]**

**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

### **2 Commencement**

This Act commences on 1 July 2005.

### **3 Act binds all persons**

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.

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

- (1) The main purpose of this Act is to establish a scheme for portability of long service leave in the contract cleaning industry.
- (2) As part of the scheme, there are registration provisions for employers and workers and ways for calculating long service leave entitlements.
- (3) Although an employer is required to be registered, the obligations under this Act apply to an employer whether or not the employer is registered under this Act.
- (4) Generally, an entitlement under this Act only accrues to a worker who is registered under this Act.

## Part 2 Interpretation

### 5 Definitions

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

### 6 Meaning of *cleaning work*

*Cleaning work* is work, performed in Queensland, that has as its main or only function the bringing of premises into, or keeping of premises in, a clean condition.

### 7 Meaning of *contract cleaning industry*

The *contract cleaning industry* is the industry in which individuals are engaged by a person to perform cleaning work for other people.

### 8 Who is an *employer*

- (1) An *employer* is a person who engages 1 or more individuals to perform cleaning work in the contract cleaning industry.
- (2) However, *employer* does not include—
  - (a) the Commonwealth; or
  - (b) the State; or
  - (c) a local government; or
  - (d) a company whose only workers are directors, if each of the directors participates in the management of the company or shares in its profits.

### 9 Who is a *worker*

- (1) A *worker* is an individual who—
  - (a) under a contract of service is engaged to perform cleaning work in the contract cleaning industry; or

- (b) under a contract, whether or not the contract is a contract of service, or at piecework rates, is engaged to perform cleaning work in the contract cleaning industry, for labour only or substantially for labour only; or
- (c) under a contract, whether or not the contract is a contract of service, performs cleaning work in the contract cleaning industry unless—
  - (i) the individual—
    - (A) is paid to achieve a stated result or outcome; and
    - (B) has to supply all, or substantially all, of the plant and equipment or tools of trade needed to perform the work; and
    - (C) is, or would be, liable for the cost of fixing a fault with the work performed; or
  - (ii) a personal services business determination is in effect for the individual performing the work under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60.
- (2) Also, **worker** includes an individual who is engaged to perform both cleaning work and supervision of other workers in the contract cleaning industry, whether or not the individual is known as a supervisor, leading hand or another title.
- (3) However, **worker** does not include an individual who performs work in the contract cleaning industry—
  - (a) in a managerial or clerical capacity; or
  - (b) under a contract of service with a partnership if the individual is a partner and participates in the management of the partnership or shares in its profits; or
  - (c) under a contract of service with the Commonwealth, the State or a local government.

## 10 Meaning of **information notice**

- (1) An **information notice** is a notice to a person about a decision of the authority relating to the person stating—

- (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) whether or not the person may apply for a reconsideration of the decision or appeal against the decision to a stated entity; and
  - (d) if the person may make an application or appeal against a decision as mentioned in paragraph (c), the day by which the application must be made or the appeal must be started.
- (2) A provision under this Act may provide that an information notice for the purposes of the provision must include other stated information.
- (3) If a person may apply for a reconsideration of a decision, or appeal against a decision to a stated entity, within a number of days after the day an information notice is given to the person, a defect in the notice does not affect the person's right to make the application or appeal in relation to the matters dealt with in the information notice.

## **11 Grounds that are reasonable in the circumstances**

- (1) If, under this Act, a person is required to be satisfied or not satisfied of, or have a belief or suspicion about, a particular matter before the person may do or refrain from doing an act, or make a decision, the person must be satisfied or not satisfied or have the belief or suspicion on grounds that are reasonable in the circumstances.
- (2) If, under this Act, a person who is satisfied or not satisfied of, or has a belief or suspicion about, a particular matter is required to do or refrain from doing an act, or make a decision, the person must be satisfied or not satisfied, or have the belief or suspicion, on grounds that are reasonable in the circumstances.

## **12 Notes in text**

A note in the text of this Act is part of the Act.

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

### **Division 1**                      **Establishment of authority**

#### **13**                      **Authority established**

- (1) The Contract Cleaning Industry (Portable Long Service Leave) Authority is established.
- (2) The authority—
  - (a) is a body corporate; and
  - (b) has a seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The authority does not represent the State.
- (4) The authority may operate under a trading name prescribed under a regulation.

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

#### **14**                      **Authority's functions**

- (1) The authority's primary function is to provide an equitable and efficient system of portable long service leave for workers in the contract cleaning industry.
- (2) The other functions of the authority are—
  - (a) to provide educational and awareness programs to the contract cleaning industry to encourage worker membership and industry compliance with this Act; and
  - (b) to give advice and make recommendations to the Minister on issues affecting the provision of long service leave in the industry and the operation of this Act; and

- (c) to perform other functions conferred on the authority under this or another Act.

## **15 Authority's powers**

- (1) The authority has the powers of an individual and may, for example—
  - (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property; and
  - (c) appoint agents and attorneys; and
  - (d) charge for, and place conditions on, the supply of goods, services or information it supplies; and
  - (e) engage consultants; and
  - (f) do anything else necessary or convenient to be done in performing its functions.
- (2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.
- (3) The authority may borrow from the Building and Construction Authority sufficient funds to provide for its administration expenses and other anticipated outgoings as contemplated by section 40(2)<sup>1</sup> for the financial year starting 1 July 2005.
- (4) Subsection (3) does not limit the authority's power to borrow funds under the *Statutory Bodies Financial Arrangements Act 1982*.
- (5) The authority may exercise its powers inside and outside Queensland.
- (6) Without limiting subsection (5), the authority may exercise its powers outside Australia.

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<sup>1</sup> Section 40 (Funds of authority)

## **Division 3                      Establishment of board for authority**

### **16            Board established**

- (1) The authority has a board of directors.
- (2) The board's role includes—
  - (a) responsibility for the authority's commercial policy and management; and
  - (b) ensuring, as far as possible, the authority achieves and acts in accordance with its corporate goals and carries out its corporate objectives outlined in its corporate plan; and
  - (c) ensuring the authority otherwise performs its functions in an appropriate, effective and efficient way.

### **17            Composition of board**

- (1) The board has not more than 8 directors, consisting of—
  - (a) a person appointed as the chairperson; and
  - (b) a person appointed as the deputy chairperson; and
  - (c) 2 or 3 persons appointed as representatives of employers; and
  - (d) 2 or 3 persons appointed as representatives of workers.
- (2) The deputy chairperson must be a person with knowledge of, and experience in, commerce, economics, finance or management.
- (3) The number of directors appointed under subsection (1)(c) and under subsection (1)(d) must be equal.

### **18            Appointment of directors**

The Governor in Council may appoint, by industrial gazette notice, a person as a director of the board for a term of not more than 3 years.



## 19 Disqualification from board

- (1) A person can not become, or continue as, a director if the person—
- (a) is an insolvent under administration within the meaning of the Corporations Act; or
  - (b) is, or has been, convicted of an indictable offence (including an indictable offence dealt with summarily) or an offence against this Act, and the conviction is not a spent conviction.

- (2) In this section—

*spent conviction* means a conviction—

- (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.<sup>2</sup>

## 20 Vacation of office

The office of a director becomes vacant if the director—

- (a) dies; or
- (b) gives to the Minister a signed notice of resignation; or
- (c) is absent, without leave of the board and without a reasonable excuse, from 3 consecutive meetings of the board of which proper notice was given; or
- (d) can not continue as a member under section 19; or
- (e) is removed from office by the Governor in Council.

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<sup>2</sup> *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 11 (Revival of convictions)

## **21 Casual vacancy**

- (1) If an office of a director becomes vacant during the director's term of appointment, the Governor in Council may appoint someone else to the office for the remaining part of the term.
- (2) The person appointed in place of the director must—
  - (a) if the director was a director mentioned in section 17(1)(b)<sup>3</sup>—have the knowledge and experience as required under section 17(2); or
  - (b) if the director was a director mentioned in section 17(1)(c) or (d)—be a representative as required under section 17(1)(c) or (d).
- (3) A person appointed in place of a director who was the chairperson or deputy chairperson will also be the chairperson or deputy chairperson respectively.

## **22 Remuneration and other entitlements of directors**

A director is entitled to be paid the fees, remuneration and allowances decided by the Governor in Council.

## **Division 4 Business of the board**

### **23 Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in a way it considers appropriate.

### **24 Frequency of meetings**

- (1) The chairperson must call meetings of the board 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 period between each meeting must not be more than 3 months.

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3 Section 17 (Composition of board)

- (3) The chairperson must also call a meeting if both of the following ask for a meeting to be called—
  - (a) a director appointed under section 17(1)(c);<sup>4</sup>
  - (b) a director appointed under section 17(1)(d).

## **25 Presiding at meetings**

- (1) The chairperson is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is not present at a meeting of the board, the deputy chairperson is to preside.
- (3) When the deputy chairperson presides at a meeting, the deputy chairperson has all the functions and powers of the chairperson.

## **26 Quorum**

- (1) Business must not be conducted at a meeting of the board unless a quorum is present.
- (2) A quorum consists of at least 3 directors, including—
  - (a) the chairperson or deputy chairperson; and
  - (b) a director appointed under section 17(1)(c); and
  - (c) a director appointed under section 17(1)(d).

## **27 Conduct of meetings**

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

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<sup>4</sup> Section 17 (Composition of board)

- (4) If the votes are equal, the director presiding at the meeting has a casting vote.
- (5) The board may hold meetings, or allow directors to take part in its meetings, by using any technology that reasonably allows directors to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (6) A director who takes part in a meeting under subsection (5) is taken to be present at the meeting.
- (7) When considering the question, regard must be given to any material from, or comments by, the general manager about the question.

## **28 Decisions made by written reference**

- (1) A question by written reference may be decided by majority vote of the directors voting on the question in response to the reference.
- (2) At least 1 of the directors voting on the question must be either the chairperson or deputy chairperson.
- (3) If the votes are equal and the chairperson is voting, the chairperson has the casting vote.
- (4) If the votes are equal and the chairperson is not voting, the deputy chairperson has the casting vote.
- (5) When considering the question, regard must be given to any material from, or comments by, the general manager about the question.
- (6) In this section—

*written reference* means a procedure in which the general manager gives to each director a question for the director's decision other than at a meeting of the board.

## 29 Minutes

- (1) The board must keep a record of a decision of the board, whether the decision is made at a meeting or by written reference.
- (2) The record must be presented at the board's next meeting for confirmation.
- (3) If the record is confirmed, it must be signed by the director presiding at the meeting and forms part of the minutes of the meeting.

## 30 Disclosure of interests by directors of the board

- (1) This section applies to a director (the *interested director*) if—
  - (a) the interested director has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the director's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested director's knowledge, the director must disclose the nature of the interest to a board meeting.
- (3) Unless the board otherwise directs, the interested director must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board about the issue.
- (4) The interested director must not be present when the board is considering whether to give a direction under subsection (3).
- (5) If there is another director who must, under subsection (2), also disclose an interest in the issue, the other director must not—
  - (a) be present when the board is considering whether to give a direction under subsection (3) about the interested director; or

- (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a director is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the director were present; the remaining directors present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded in the minutes of the meeting.

## **Division 5 Administration**

### **31 Administration subject to Minister**

Subject to the Minister, the authority administers this Act.

### **32 General manager**

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

### **33 Management of authority by general manager**

- (1) Subject to the board, the general manager is to manage the business of the authority.
- (2) A thing done in the name of or for the authority by the general manager is taken to have been done by the authority.

### **34 Staff of the authority**

- (1) The staff of the Building and Construction Authority are to provide the Contract Cleaning Industry (Portable Long

Service Leave) Authority with the administrative support services that it requires to carry out its functions effectively and efficiently.

- (2) Also, a member of the staff may, subject to this Act, do all things necessary for the discharge of the functions of the authority.

### **35 Authority's seal**

- (1) The general manager must keep the authority's seal in the general manager's custody.
- (2) The seal may be attached to a document by the general manager only—
  - (a) by resolution of the board; and
  - (b) in the presence of the chairperson or, if the chairperson is absent, the deputy chairperson.
- (3) Judicial notice must be taken of the imprint of the authority's seal attached to a document.
- (4) A document with the authority's seal attached to it may be presumed to be properly made.

### **36 Judicial notice of signatures**

Judicial notice must be taken of—

- (a) the signature of a person who is or has been the chairperson, the deputy chairperson, a director of the board or the general manager; and
- (b) the fact the person holds or has held the relevant office.

### **37 Document presumed to be properly made**

A document made by the authority, other than a document required by law to be sealed, may be presumed to be properly made if it is signed by the chairperson, deputy chairperson or general manager.

### 38 Contracts or agreements

- (1) The authority's power to make, vary or discharge contracts or agreements must be exercised as follows—
  - (a) for a contract or agreement that, if it were between individuals, must be a written contract or agreement and under seal—by a written contract or agreement in the authority's name and under the seal of the authority;
  - (b) for a contract or agreement that, if it were between individuals, must be a written contract or agreement and signed by the parties—by a written contract or agreement in the authority's name and signed by a person acting for the authority.
- (2) The authority's power to make, vary or discharge a contract or agreement that, if it were between individuals, may be made orally, may be exercised orally by a person acting for the authority.

### 39 Agreement about administration of this Act

- (1) The authority may enter into a written agreement with the Building and Construction Authority in relation to the administration of this Act, including expenses attributable to the administration (*administration expenses*).

*Examples of administration expenses—*

  - staff costs
  - rent
  - cost of electricity use
- (2) Without limiting subsection (1), the agreement may provide that the Building and Construction Authority—
  - (a) must pay the administration expenses; and
  - (b) may recoup the administration expenses from the authority, with interest, at a rate stated in the agreement.



## **Division 6                      Financial Provisions**

### **40            Funds of authority**

- (1) The funds of the authority consist of—
  - (a) levy amounts paid to the authority; and
  - (b) amounts borrowed by the authority; and
  - (c) proceeds from investments by the authority; and
  - (d) other amounts received by the authority.
- (2) The funds may only be applied in making—
  - (a) long service leave payments; and
  - (b) payments for expenses incurred in the administration of this Act including, for example, payments to the Building and Construction Authority under an agreement mentioned in section 39; and
  - (c) payments for borrowings by the authority; and
  - (d) investments by the authority; and
  - (e) other payments authorised by this Act.

### **41            Proposed budget and progress 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 has no effect unless it is approved by the Minister.
- (3) The authority must give the Minister progress reports on the operation of the budget.
- (4) Progress reports are to be given when, and in the way, the Minister requires.

### **42            Actuarial investigation of funds**

- (1) At least every 2 years, but otherwise as required by the board, the authority must investigate the adequacy of the authority's

funds and the adequacy of the percentage prescribed under a regulation as the rate of levy.

- (2) For subsection (1), the board must appoint a person (an *actuary*) who is recognised as an actuary and holds qualifications that the board considers suitable to carry out the investigation.
- (3) The actuary must—
  - (a) finish the investigation, and report the outcome of the investigation to the authority after the investigation is conducted; and
  - (b) state in the report an opinion about whether the rate of levy should be reduced, increased or stay the same.
- (4) After the authority receives the report, the authority must give the report to the Minister with its recommendations on—
  - (a) the opinion stated by the actuary under subsection (3)(b); 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 rate of levy are adequate.

#### **43 Application of Finance Acts**

- (1) The authority is a statutory body within the meaning of the *Financial Administration and Audit Act 1977*.
- (2) The authority is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.
- (3) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>5</sup> sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

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<sup>5</sup> *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

## Part 4 Registration

### Division 1 Registration of workers

#### 44 Authority to keep register of workers

The authority must keep a register of persons who are registered under section 47 or 48 (a *register of workers*).

#### 45 Particulars to be entered in register of workers

- (1) To the extent the authority has, or is reasonably able to obtain, any of the following information about each person who is a registered worker, the authority must enter it in the register of workers in relation to the person—
  - (a) the person's name, birthday and residential address;
  - (b) the day the person became a registered worker;
  - (c) the amount of the person's entitlement to long service leave;
  - (d) if the person no longer performs cleaning work in the contract cleaning industry—the day the person stopped performing cleaning work in the contract cleaning industry.
- (2) Also, the authority may enter in the register any other information it considers necessary for the administration of this Act.

#### 46 Application for registration as a registered worker

- (1) A person may apply for registration as a worker in the contract cleaning industry.
- (2) The application must be in the approved form.
- (3) The authority may, by notice, ask the applicant to do 1 or both of the following 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, if asked, 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.

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

If a person applies to the authority for registration as a worker in the contract cleaning industry under section 46, the authority must—

- (a) consider the application; and
- (b) either—
  - (i) grant the application and enter the person's name in the register of workers; or
  - (ii) refuse to grant the application and give the person an information notice about the refusal.

**48 Worker may become a registered worker other than by application**

- (1) The authority may decide a person is, or was, a worker if—
  - (a) the authority has received information indicating the person is, or was, a worker; and
  - (b) the authority is satisfied that person is, or was, a worker.
- (2) The authority may decide that a person is, or was, a worker even though an application under section 46 has not been made.
- (3) If the authority decides a person is, or was, a worker, the authority may enter the person's name in the register of workers.

- (4) The authority must give the person an information notice about the authority's decision to enter the person's name in the register of workers.

#### **49 When does a person becomes a registered worker**

- (1) For section 45(1)(b),<sup>6</sup> the day on which a person becomes a registered worker (the *registration day*) is—
- (a) if the person applies under section 46 and the application is granted—the day the authority receives the application; or
  - (b) if the authority receives other information indicating the person is a worker as mentioned in section 48—the day the authority receives the information.
- (2) However, if the authority is satisfied the person was a worker for a period before the person's registration day, the authority must nominate an earlier day as the day the person became a registered worker.
- (3) For subsection (2), the authority must not nominate a day earlier than—
- (a) the start of the financial year that is the second last full financial year before the person's registration day, unless the authority is satisfied special circumstances exist; and
  - (b) in any event—1 July 2005.

*Examples for subsection (3)(a)—*

- 1 A person applies to become a registered worker on 1 February 2009. The authority may nominate a date no earlier than 1 July 2006.
- 2 The authority receives a return from an employer for a worker on 1 July 2009. The authority may nominate a date no earlier than 1 July 2007.

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6 Section 45 (Particulars to be entered in register of workers)

## **50 Cancellation of registration as a registered worker**

- (1) The authority may cancel a person's registration under this division if it is satisfied about any of the following—
  - (a) the person has not been a worker;
  - (b) the person has not, for at least 4 consecutive years, been credited with service in the register of workers or a record kept under a corresponding law;
  - (c) the person's application to become a registered worker should have been refused because information provided in the application was false or misleading.
- (2) If the authority cancels a person's registration, it must—
  - (a) give the person an information notice about the cancellation; and
  - (b) remove the person's name from the register of workers—
    - (i) if an application for reconsideration of the decision or an appeal under part 8 is lodged against the cancellation before the end of 120 days after the day the authority gives the person the information notice—on the day the application or appeal is withdrawn or the cancellation is finally confirmed; or
    - (ii) otherwise—after 120 days from the day the authority gives the person the information notice.
- (3) However, if a payment for long service leave is made to a person under section 72(2)(a), the authority must immediately—
  - (a) cancel the person's registration as a registered worker; and
  - (b) give the person an information notice about the cancellation; and
  - (c) remove the person's name from the register of workers.
- (4) When the person's name is removed from the register of workers—

- (a) the person is no longer a registered worker; and
  - (b) the person, or the personal representative of the person, is not entitled to apply for or be paid long service leave for any days' service credited to the person in the register of workers at the time of the removal.
- (5) This section does not prevent a person whose name has been removed from the register of workers under this section from subsequently becoming a registered worker.

## **Division 2                      Registration of employers**

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

The authority must keep a register of persons who are registered under section 55 (a *register of employers*).

### **52            Particulars to be entered into register of employers**

- (1) To the extent the authority has, or is able to obtain, any of the following information about each person who is a registered employer, the authority must enter it in the register of employers in relation to the person—
- (a) the person's name;
  - (b) any trading name of the person;
  - (c) the person's ABN, if any;
  - (d) the address of the person's principal place of business;
  - (e) if the person is a corporation—
    - (i) the address of the corporation's registered office; and
    - (ii) the corporation's ACN;
  - (f) the day the person became registered as an employer;
  - (g) if the person is no longer an employer—the day the person stopped being an employer.

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

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

- (1) A person must apply to become a registered employer within 7 days after becoming an employer.

Maximum penalty—40 penalty units.

- (2) The application must be in the approved form.
- (3) The approved form may require an employer—
- (a) to state the following—
    - (i) any name under which the employer is or has been engaged in the contract cleaning industry;
    - (ii) any business address of the employer;
    - (iii) any place a record mentioned in section 66<sup>7</sup> may be inspected during normal business hours; and
  - (b) to give other information or produce documents the authority considers are relevant to the administration of this Act.
- (4) The authority may, by notice, ask the applicant to do 1 or both of the following 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, if asked, by statutory declaration.
- (5) The applicant must comply with a request made under subsection (4) within the stated time, unless the applicant has a reasonable excuse.

Maximum penalty for subsection (5)—40 penalty units.

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<sup>7</sup> Section 66 (Employer to keep record for each worker)



**54 Court order about application for registration as a registered employer**

- (1) If a court finds a person guilty of an offence against subsection (2) or section 53(1) (whether or not a conviction is recorded), in addition to imposing a penalty on the person, the court may order the person to apply to the authority, within a stated time, under section 53 to become a registered employer.
- (2) A person against whom an order under subsection (1) has been made must comply with the order, unless the person has a reasonable excuse.

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

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

If a person applies to the authority to become a registered employer under section 53, the authority must—

- (a) consider the application; and
- (b) either—
  - (i) grant the application and enter the person's name in the register of employers; or
  - (ii) refuse to grant the application and give the person an information notice about the refusal.

**56 Employer to give notice of a change to information given**

A person who is a registered employer must give notice to the authority about a change to the information provided under section 52(1)(a) to (e) about the person within 14 days after the change happens.

Maximum penalty—40 penalty units.

**57 Cancellation of registration as a registered employer**

- (1) If a registered employer stops engaging workers to perform cleaning work in the contract cleaning industry, the registered

employer may, by notice, apply to the authority for cancellation of the registration.

- (2) If the authority refuses to cancel the registered employer's registration, the authority must give the registered employer an information notice about the refusal.

### **Division 3                      Power to ensure employers are registered**

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

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

Maximum penalty—40 penalty units.

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

Maximum penalty for subsection (7)—40 penalty units.

## Part 5 **Service credits, returns and notices**

### 59 **What is an *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) Also *engagement period*, for a worker, is taken to include any day that the person who is or was a worker did not perform cleaning work because—
  - (a) the person had been dismissed by the person's employer for the period to ensure the person did not take long service leave during the employer's employment; or
  - (b) the person—
    - (i) sustained an injury, within the meaning of the *Workers' Compensation and Rehabilitation Act 2003*, section 32 while performing work for an employer; and
    - (ii) the person could not perform work for the employer in the contract cleaning industry because of the injury.

### 60 **Crediting service**

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

*Examples for subsection (1)—*

- 1 If a return period is 92 days in length and a worker only performs cleaning work on 1 day each week during the 92 day period, the worker must be credited with 92 days service in the register of workers for the return period, even though the worker only performed cleaning work on 13 of the days.
  - 2 If there are 4 return periods during a worker's engagement period, and the worker only performs cleaning work during 3 of the return periods, the worker will be credited with service for the total number of days in each of the 3 return periods during which the worker performed the cleaning work.
- (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 for subsection (2)—*

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

- (3) A worker mentioned in section 59(3)(b) must be credited with service as if the worker had performed work in the contract cleaning industry from the day of injury until whichever of the following first happens—
- (a) a period of 6 months, after the day of the injury, ends;
  - (b) the worker engages in employment.

## **61 Limitations on crediting service**

- (1) Subject to section 69,<sup>8</sup> a person must not be credited in the register of workers with a day's service unless the day is on or after the day the person became a registered worker under section 49.
- (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.

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<sup>8</sup> Section 69 (Retrospective service credits)

- (3) The days of service a worker must be credited for in the register of workers must be adjusted to ensure that the total number is not more than 365 days if—
- (a) for a financial year, a registered worker would otherwise be entitled to be credited with a number of days of service in the register of workers and a further number of days of service in a like register or record kept under a corresponding law; and
  - (b) the total of the days of service is more than 365 days.
- (4) The adjustment under subsection (3) must be made when an application is made under this Act or a corresponding law for payment of long service leave for service that includes either or both of the number of days of service mentioned in subsection (3)(a), or at any other time the authority may decide.

## **62 Returns**

- (1) Within 14 days after the end of a return period, a person who is or was an employer during the return period must give to the authority a return in the approved form for the period.

Maximum penalty—40 penalty units.

- (2) For each worker engaged by the person during the return period, the return must include—

- (a) the total amount of ordinary wages paid by the employer to the worker during the period for cleaning work performed by the worker; and
- (b) if the worker's engagement with the person began during the period—the day the engagement period for the worker began; and
- (c) if the worker's engagement with the person ended during the period—the day the engagement period for the worker ended; and
- (d) any other information required under a regulation.

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

- (4) An employer must give notice to the authority about a change to information mentioned in subsection (2) within 14 days after the change happens.

Maximum penalty—40 penalty units.

### **63 Payments of levy**

- (1) This section applies to a person who is or was an employer during a return period (the *employer*).

- (2) Within 14 days after the end of the return period, the employer must pay to the authority the amount of the levy payable for each of the employer's workers for the return period calculated under section 83.<sup>9</sup>

Maximum penalty—60 penalty units.

- (3) If the employer must pay to the authority additional amounts stated in a notice given to the employer under section 68(4)(b)(ii),<sup>10</sup> the employer must pay the stated amounts—

- (a) if an application for reconsideration 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; or

- (b) otherwise—14 days after receiving the notice.

Maximum penalty—60 penalty units.

- (4) If a court finds a person guilty of an offence against this section (whether or not a conviction is recorded), in addition to imposing a penalty on the person, the court may order the

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<sup>9</sup> Section 83 (Amount of levy)

<sup>10</sup> Section 68 (Decisions about ordinary wages by the authority)

person to pay to the authority the amounts payable under this section.

- (5) An amount stated in an order under subsection (4) may be recovered by the authority as a debt owed by the person named in the order.

## **64 Exemption from lodging return**

- (1) An employer may apply to the authority for an exemption from the requirement to give a return under section 62<sup>11</sup> in relation to a person who is or was engaged by the employer as a worker.
- (2) The application must be in the approved form.
- (3) The authority may grant the exemption if the authority is satisfied—
  - (a) the employer no longer engages the person to perform cleaning work; or
  - (b) the employer complies with, or makes contributions to, a similar scheme in another State about long service leave payments for the person in relation to the person performing cleaning work.
- (4) The authority may, by notice to the employer, revoke an exemption granted under subsection (3) if the authority is satisfied the exemption should no longer be given.
- (5) If the authority refuses to grant an application under subsection (1), or revokes an exemption under subsection (4), the authority must give the employer an information notice about the refusal or revocation.

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

- (1) If a person does not give a return to the authority as required under section 62(1), the person is liable to pay to the authority a civil penalty.

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11 Section 62 (Returns)

- (2) 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 a person does not pay the amount payable to the authority as required under section 63(2), the person is liable to pay to the authority a civil penalty.
- (4) 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) The amount payable as a civil penalty under this section—
  - (a) may be recovered by the authority as a debt; and
  - (b) can not be more than an amount equal to the monetary value (at the time of the initial failure) of 40 penalty units.
- (6) On application by the person or on its own initiative, the authority may remit all or part of an amount payable as a civil penalty if satisfied—
  - (a) the person did not directly or indirectly cause the circumstances of the contravention; or
  - (b) it would be fair and reasonable to make the remission given the circumstances.
- (7) If a court finds a person guilty of an offence against section 62(1) (whether or not a conviction is recorded), in addition to imposing a penalty on the person, the court may order the person to—
  - (a) pay the authority the amount of the civil penalty payable under subsection (2) to the day of the order, and an amount of interest calculated under section 87 in relation to the amount; and
  - (b) file a return for the relevant period.
- (8) If a court finds a person guilty of an offence against section 63(2) or (3) (whether or not a conviction is recorded),



in addition to imposing a penalty on the person, the court may order the person to pay the authority—

- (a) all or part of the amount the subject of the prosecution; and
  - (b) in relation to an offence against section 63(2)—the amount of the civil penalty payable under subsection (4) to the day of the order and an amount of interest calculated under section 87 in relation to the amount.
- (9) The amount stated in an order under subsection (7)(a) or subsection (8) may be recovered by the authority as a debt owed by the person named in the order.

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

- (1) For each worker of an employer, the employer must keep a record of the following particulars—
- (a) the worker's name, birthday and residential address;
  - (b) if the worker is a registered worker, the registration number of the worker;
  - (c) the days worked by the worker;
  - (d) the ordinary wages earned by the worker for each day worked;
  - (e) the day the worker's service with the employer started;
  - (f) details of long service leave granted to, or taken by, the worker;
  - (g) details of a payment made instead of long service leave to the worker;
  - (h) if the worker is no longer engaged to perform cleaning work for the employer—the day the worker stopped being engaged to perform cleaning work for the employer.

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

*Note—*

An authorised officer may require an employer to give the authorised officer a record under section 125.

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

- (1) This section applies to a person if the person was a registered worker on 30 June of a financial year.
- (2) The authority must give to the person a notice stating—
  - (a) the number of days' service in the contract cleaning industry, as shown in the register of workers, the registered worker was credited with for the financial year; and
  - (b) the total number of days' service in the contract cleaning industry the registered worker was credited with from the day the person 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 cleaning work performed by the registered worker.
- (3) A notice under subsection (2) to a person may be given by allowing the person to access the authority's website to obtain the information mentioned in subsection (2) in relation to the person.

## **68 Decisions about ordinary wages by the authority**

- (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 of a particular worker, or all of the workers, of the employer in the return period.
- (2) After considering all relevant matters, the authority may decide the return amount for the return period is either reasonable or not reasonable.
- (3) If the authority decides the return amount is not reasonable, the authority must give the employer an information notice about the decision.

- (4) The information notice must—
- (a) state the amount of ordinary wages of the worker or workers for the return period that the authority decides is reasonable; and
  - (b) require the employer to pay—
    - (i) an amount representing the difference between the amount of levy paid for the return amount and the amount of levy that should have been paid for the amount of ordinary wages decided under paragraph (a); and
    - (ii) additional amounts for which the employer is liable under sections 65(1) and (3) and 87(1).
- (5) The amount required to be paid under subsection (4)(b) may be recovered by the authority as a debt.

## **69 Retrospective service credits**

- (1) A registered worker, or person who applies to become a registered worker, may apply to the authority for credit for service (*retrospective service credit*) for a time the worker was engaged in performing cleaning work in the contract cleaning industry during any part of the 5 year period immediately before the commencement.
- (2) The authority must credit the applicant in the register of workers with the retrospective service credits the authority reasonably considers the applicant is entitled to if—
- (a) the authority is satisfied the worker was engaged in performing cleaning work in the contract cleaning industry during any part of the 5 year period immediately before the commencement; and
  - (b) the applicant is, or becomes, a registered worker.
- (3) However, a registered worker must not be credited with retrospective service credits—
- (a) for more than 5 years; or
  - (b) for more than 365 days for any year in the 5 year period; or

- (c) for a period for which the worker has an entitlement under subsection (4).
- (4) If a worker, who is entitled to become a registered worker on the commencement, has an entitlement to long service leave under the *Industrial Relations Act 1999* from an employer, the liability for the entitlement remains with the employer.
- (5) The authority must nominate the total amount of the ordinary wages for the period of the retrospective service credits.
- (6) For calculating the amount of a long service leave payment under section 73, the amount of the ordinary wages nominated by the authority under subsection (5) is taken to have been earned by the worker in a return period.
- (7) The authority must give the applicant an information notice about the decision and, if the authority credits the registered worker with retrospective service credits, the notice must include—
  - (a) the amount of retrospective service credits the authority considers the applicant is entitled to be credited with under subsection (2); and
  - (b) the total amount of the ordinary wages the authority has nominated under subsection (5).
- (8) In this section—

***commencement*** means commencement of this section.

***employer*** means an employer of the worker (on or before the commencement) for the period for which the worker applies for retrospective service credit.

## **70 Time frames for application for retrospective service credits**

- (1) An application under section 69(1) must be—
  - (a) made within 2 years after the commencement of this section; and
  - (b) made in the approved form; and
  - (c) accompanied by evidence that the applicant was engaged in performing cleaning work in the contract

cleaning industry and evidence of the applicant's ordinary wages for the time covered by the application.

- (2) However, the authority may accept an application made after 2 years after the commencement of this section, if the authority considers there are special circumstances in relation to the particular application.
- (3) The authority may, by notice, ask the applicant to do 1 or both of the following 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, if asked, 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.
- (5) If the authority refuses to grant the application, the authority must give the applicant an information notice about the refusal.

## **Part 6 Long service leave**

### **71 Application for long service leave entitlement**

- (1) A registered worker who has credit for service in the register of workers may apply to the authority for payment for—
  - (a) all or part of the registered worker's long service leave entitlement under section 72(1); or
  - (b) all of the registered worker's long service leave entitlement under section 72(2)(a).
- (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 award or relevant industrial agreement provides for the registered worker to be paid instead of taking the long service leave; and
  - (b) the registered worker has entered into a signed agreement with the authority to be paid all or part of the entitlement.
- (3) If the registered worker does not enter into a signed agreement under subsection (2)(b), a payment may be made only if—
- (a) the registered worker has accrued 3650 days service in the register of workers; and
  - (b) the industrial commission has ordered the payment under the *Industrial Relations Act 1999*, section 53(3).<sup>12</sup>
- (4) If a registered worker has died and, immediately before the death, the registered worker had an entitlement to long service leave under section 72(1), the registered worker's personal representative may apply to the authority for payment for the entitlement.
- (5) An application under this section must be in the approved form.
- (6) If the authority refuses payment in relation to an application for payment under subsection (1) or (4), the authority must give the applicant an information notice about the refusal.

## **72 Entitlement to long service leave**

- (1) If a registered worker has been credited with 3650 days or more service in the register of workers, the registered worker's entitlement to long service leave is—
- (a) for each period of 3650 days of service—8.67 weeks; and
  - (b) for each day of service not included in a period of service under paragraph (a)—the proportion of 8.67 weeks that the number of days' service bears to 3650 days.

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<sup>12</sup> *Industrial Relations Act 1999*, section 53 (Payment instead of long service leave)

- (2) A worker is entitled to a proportionate payment for long service leave if the worker has been credited with at least 2555 days service in the register and—
  - (a) intends to permanently stop performing cleaning work in the contract cleaning industry; or
  - (b) dies.
- (3) Long service leave does not include a public holiday that happens during the long service leave taken by the registered worker.

### 73 Amount of long service leave payment

- (1) Subject to sections 72 and 74, the authority must pay to an applicant for payment of a long service leave entitlement under section 71 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 at the time the application under section 71 is made.

- (2) The authority must pay the applicant for a public holiday that happens during the long service leave taken by the applicant.
- (3) Unless it is likely to be the last payment for a long service leave entitlement paid to the applicant by the authority, the authority must not pay the applicant for a period of long service leave that is less than 5 days.
- (4) In this section—

*classification level* means a classification level under an award or relevant industrial agreement prescribed under a regulation.

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

#### **74 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's 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's service under section 75, has already been made under this or another Act, or an award or relevant industrial agreement.

#### **75 Payments to employers**

- (1) This section applies if a registered worker has been paid all or part of the registered worker's long service leave entitlement by an employer for a period when the registered worker was engaged in performing cleaning work in the contract cleaning industry.
- (2) This section also applies if a registered worker has died and the registered worker's personal representative has been paid all or part of the registered worker's long service leave entitlement by an employer for a period when the registered worker was engaged in performing cleaning work in the contract cleaning industry.
- (3) On application by the employer who paid the registered worker's long service leave entitlement, the authority must pay to 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 at the time the long service leave entitlement was paid by the employer.

*Note—*

An employer is not entitled to be paid an amount under this section for a period for which retrospective service credits were credited as mentioned in section 69(2).

- (4) An application under subsection (3) must be made—
  - (a) in the approved form; and
  - (b) 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.
- (5) However, the employer is not entitled to be paid under this section—
  - (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 (2); 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.
- (6) Despite section 50(1)(a),<sup>13</sup> for a worker whose name has been removed from the register of workers under that provision, an employer is entitled to be paid an amount the employer would have been entitled to be paid under this section if the worker's name had not been removed.
- (7) An employer is entitled to be paid for a public holiday that happens during the long service leave taken by a registered worker.
- (8) In this section—

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13 Section 50 (Cancellation of registration as a registered worker)

**classification level** means a classification level under an award or relevant industrial agreement prescribed under a regulation.

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

## 76 If employer unable to pay benefit

- (1) This section applies if the authority is satisfied that—
  - (a) a registered worker is, or was immediately before the registered worker's death, entitled to long service leave, other than under this Act, for a period when the registered worker was engaged in performing cleaning work in the contract cleaning industry; and
  - (b) the employer who is liable to pay the entitlement can not pay the full amount of the entitlement.
- (2) The employer may pay to 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 under section 75 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 long service leave 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 1999*, section 46;<sup>14</sup>
- (ii) the *Industrial Relations Act 1999*, section 49.<sup>15</sup>

## **77 Authority may pay if employer insolvent**

- (1) This section applies if—
  - (a) the employer of a registered worker is or becomes an insolvent under administration, or an externally-administered body corporate, within the meaning of the Corporations Act; and
  - (b) the registered worker has an entitlement to long service leave.
- (2) The authority may pay to the worker, or the worker's personal representative, the difference between—
  - (a) the amount of the worker's long service leave entitlement under this Act; and
  - (b) an amount the worker or personal representative has received from or on behalf of the employer for the worker's long service leave entitlement under this Act.

## **78 If credit for service accrued elsewhere**

- (1) A person who is a registered worker may apply to the authority for payment by the authority of a long service leave entitlement calculated in a way stated in a corresponding law of a reciprocating State if—
  - (a) the person—
    - (i) has, for a period, been engaged in performing cleaning work in the contract cleaning industry in the reciprocating State, or partly in the reciprocating State and partly in Queensland; and

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14 *Industrial Relations Act 1999*, section 46 (Payment for long service leave)

15 *Industrial Relations Act 1999*, section 49 (Payment for long service leave)

- (ii) because of the length of the period, is entitled under the corresponding law to a payment of a long service leave benefit; 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 section 72.<sup>16</sup>
- (2) If a registered worker has died and, immediately before the death, the registered worker was entitled to apply for payment for a long service leave entitlement under subsection (1), the registered worker's personal representative may apply to the authority for the payment.
- (3) The authority must pay to an applicant under subsection (1) or (2) 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) An application for the payment may be included in an application under section 71.<sup>17</sup>
- (5) If the authority makes a payment under this section in relation to a period of cleaning work engaged in a reciprocating State, the authority must take all appropriate steps to ensure the authority is reimbursed by the corresponding authority for the payment.
- (6) An application under this section must be in the approved form.
- (7) If the authority refuses payment in relation to an application for payment under subsection (1) or (2), the authority must give the applicant an information notice about the refusal.

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<sup>16</sup> Section 72 (Entitlement to long service leave)

<sup>17</sup> Section 71 (Application for long service leave entitlement)

## **79 If a corresponding authority pays**

- (1) If, under a corresponding law, a corresponding authority pays to 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 144<sup>18</sup> for the reciprocating State in which the corresponding authority is established.

## **80 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.

## **81 Payment may be deferred**

- (1) A person who applies for a payment for a long service leave entitlement 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.

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18 Section 144 (Arrangements with other States)

## Part 7 Long service leave levy

### 82 Imposition of levy

A long service leave levy is imposed on the ordinary wages of each worker in the contract cleaning industry.

### 83 Amount of levy

For each worker, the amount of the levy is the percentage, prescribed under a regulation, of the ordinary wages paid to the worker.

### 84 Authority may give notice if levy is not paid

- (1) This section applies if the authority believes all or part of the levy has not been paid under section 63(2)<sup>19</sup> in relation to the ordinary wages of 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 court finds a person has contravened subsection (3), in addition to an order the court may make imposing a penalty, the 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 for subsection (6)—60 penalty units.

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19 Section 63 (Payment of levy)

## **85 Additional levy payments**

- (1) This section applies if the levy payable in relation to the ordinary wages of a worker is more than the amount an employer has paid to the authority as 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 is reasonably attributable to the employer.
- (3) Within 14 days after receiving the notice, the employer must pay to the authority the unpaid amount stated in the notice.  
Maximum penalty—60 penalty units.
- (4) If a court finds a person guilty of an offence against subsection (3) whether or not it convicts the person, in addition to imposing a penalty on the person, the court may order the person to pay the authority the unpaid amount that is reasonably attributable to the employer.
- (5) The unpaid amount stated in an order under subsection (4) may be recovered by the authority as a debt owed by the person named in the order.

## **86 Appointment of agents for collection of levy amounts**

- (1) The authority may enter into agreements with agents appointed by it for the collection of levy amounts.
- (2) An agreement with an agent may provide for the payment of remuneration for the agent.
- (3) This section does not limit any other power of the authority under this Act, including for example, under section 15.<sup>20</sup>

## **87 Interest on, 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 under a regulation.
- (2) Interest forms part of, and may be recovered as, unpaid levy.

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<sup>20</sup> Section 15 (Authority's powers)

- (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 63 and 84.<sup>21</sup>

## **88 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 by a person appointed by it.
- (3) If it appears to the authority that the levy amount has not been fully paid, the authority may make an assessment of the amount owing.
- (4) The authority must give a notice of the assessment to the person to whom the assessment relates.

## **89 Penalties no relief from levy**

A payment of a penalty for an offence against this Act or of a civil penalty under section 65(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.

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<sup>21</sup> Sections 63 (Payments of levy) and 84 (Authority may give notice if levy is not paid)



## Part 8 Appeals

### Division 1 Purpose of this part

#### 90 Purpose of pt 8

- (1) The purpose of this part is to provide for reconsideration of, and appeals from, the following—
  - (a) a decision made by the authority in relation to a matter for which this Act provides an application can be made or in relation to 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 direction or notice given by the authority.
- (2) A matter mentioned in subsection (1)(a) to (d) is an *original decision*.

### Division 2 Internal reconsideration of original decision

#### 91 Reconsideration of original decision of authority

- (1) A person who is aggrieved by an original decision of the authority (an *aggrieved person*) may apply for a reconsideration of the decision (an *application for reconsideration*).
- (2) The application must—
  - (a) be made in the approved form to the authority—
    - (i) if the original decision relates to information contained in a notice given to the aggrieved person

- under section 67(2)<sup>22</sup>—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 the original decision is made or given; and
- (b) be 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 decide the time for applying for a reconsideration be changed to a later stated time.
- (4) If the authority decides the employer or a worker of the aggrieved person may have an interest in the application, the authority must give notice of the application (the **reconsideration notice**) and supporting documents to the employer or worker (the **recipient**).
- (5) The reconsideration notice must inform the recipient that submissions on the application may be made to the authority before a stated day at least 14 days after the application is made to the authority.
- (6) If the recipient makes a submission on the application, the authority must provide a copy of the submission to the aggrieved person and allow the aggrieved person at least 7 days after the copy is given to the aggrieved person to make a further submission to the authority.
- (7) Within 45 days after receiving the application, the authority must—
- (a) review the original decision; and
  - (b) consider the application and any submissions properly made; and
  - (c) make a decision (the **reconsidered decision**) to—
    - (i) confirm or revoke the original decision; or

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22 Section 67 (Notice to registered workers about service credits)

- (ii) vary the original decision in a way the authority considers appropriate; and
  - (d) give an information notice about the reconsidered decision to the aggrieved person and any recipient of a reconsideration notice.
- (8) However, the authority is taken to have refused the application for reconsideration if, within 45 days after receiving the application, the authority—
  - (a) does not give the aggrieved person an information notice about the reconsidered decision; and
  - (b) has not asked the aggrieved person for further information about the reconsideration.
- (9) If the authority asks for further information about the reconsideration and does not give the aggrieved person an information notice about the reconsidered decision, the authority is not taken to have refused the application for reconsideration until 60 days after the authority receives the application.
- (10) An application for a reconsideration of an original decision does not stay the decision.
- (11) Despite the *Acts Interpretation Act 1954*, section 27A,<sup>23</sup> 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.

## **Division 3                      Appeals to industrial magistrate**

### **92            Appeal**

- (1) A person aggrieved by a reconsidered decision may appeal to an industrial magistrate.
- (2) The appeal must be started within 28 days after—

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<sup>23</sup> *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

- (a) if an information notice about the reconsidered decision is given to the person—the day the information notice is given; or
  - (b) otherwise—the day the authority is, under section 91(8) or (9), taken to have refused the application for reconsideration.
- (3) In deciding an appeal, the industrial magistrate may—
- (a) confirm the decision appealed against; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the authority with directions the industrial magistrate considers appropriate.
- (4) Without limiting the industrial magistrate's powers under the *Industrial Relations Act 1999*, in deciding the appeal 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 the authority's decision, except that it is not an original decision or a reconsidered decision.
- (6) The industrial magistrate may make an order about costs the magistrate considers just.

### **93 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 Magistrates Court nearest to the place where the appellant lives or carries on business.
- (2) The notice of appeal must state—
  - (a) the decision 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.

## 94 Directions

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

## 95 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.

## 96 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                      Appeal to industrial commission**

### **97            Appeal**

- (1) A person aggrieved by a reconsidered decision of the authority about a decision under section 69(2) or (5)<sup>24</sup> may, instead of appealing to the industrial magistrate, appeal to the industrial commission (the *commission*).
- (2) The appeal must be started, as required under the rules made under the *Industrial Relations Act 1999*, within 21 days after the person is given an information notice about the decision being appealed.
- (3) However, the commission may extend the time for starting an appeal.

### **98            Nature of appeal**

- (1) An appeal to the commission is by way of rehearing on the record.

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24 Section 69 (Retrospective service credits)

- (2) However, the commission may hear evidence afresh, or hear additional evidence, if the commission considers it appropriate to effectively dispose of the appeal.

## **99 Decision on appeal**

- (1) The commission must deal with an appeal as quickly as possible.
- (2) The commission may—
- (a) confirm the decision appealed against; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the authority with directions the commission considers appropriate.
- (3) Without limiting the industrial commission's powers under the *Industrial Relations Act 1999*, in deciding the appeal the industrial commission has the same powers as the authority.
- (4) Subject to section 100, the commission's decision—
- (a) is final and conclusive; and
  - (b) can not be impeached for informality or want of form.

## **Division 5 Appeal to industrial court**

### **100 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) a decision of an industrial magistrate in an appeal under section 92(3); or
  - (b) a decision of the commission in an appeal under section 99(2).
- (2) An appeal under subsection (1) is limited to—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

## **Part 9                      Authorised officers and their powers**

### **Division 1                  Authorised officers**

#### **101      Appointment and qualifications**

- (1) The general manager may appoint any of the following persons as an authorised officer—
  - (a) a public service employee;
  - (b) a person prescribed under a regulation.
- (2) However, the general manager may appoint a person as an authorised officer only if the general manager is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- (3) The general manager is also an authorised officer.

#### **102      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 under this Act.
- (3) The Minister may place conditions on the general manager's powers as an authorised officer.



- (4) In this section—

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

### **103 Issue of identity card**

- (1) The general manager must issue an identity card to each authorised officer.
- (2) The general manager must also have an identity card identifying the general manager as an authorised officer.
- (3) 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.
- (4) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

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

- (1) In exercising a power under this Act in relation to a person, 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 as mentioned in section 107(1)(b) or (2).<sup>25</sup>

### **105 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised officer ceases to hold office.
- (2) Subsection (1) does not limit the ways an authorised officer may stop holding office.
- (3) In this section—

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

### **106 Return of identity card**

- (1) A person who ceases to be an authorised officer must return the person's identity card to the general manager within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) However, if the person is the general manager and the person ceases to be the general manager, the person must return the person's identity card to the Minister within 21 days after ceasing to be the general manager unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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<sup>25</sup> Section 107 (Power to enter places)

## **Division 2                      Procedure for entry**

### **107      Power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is an employer's place of business and is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the authorised officer considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), a place of business does not include a part of the place where a person resides.

### **108      Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 107(1)(a).
- (2) Before asking for the consent, the authorised officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.

- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **109 Application for warrant**

- (1) An authorised officer may apply to an industrial magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The industrial magistrate may refuse to consider the application until the authorised officer gives the industrial magistrate all the information the industrial magistrate requires about the application in the way the magistrate requires.

*Example for subsection (4)—*

The industrial magistrate may require additional information supporting the written application to be given by statutory declaration.

## **110 Issue of warrant**

- (1) The industrial magistrate may issue the warrant for the place if the industrial magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place or, within the next 7 days, will be at the place.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and another place necessary for entry to the place; and
    - (ii) exercise the authorised officer's powers under this part; and
  - (c) particulars of the offence that the industrial magistrate considers appropriate in the circumstances; and
  - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the industrial magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the industrial magistrate's name; and
  - (h) the date and time of the warrant's issue; and
  - (i) the date, within 14 days after the warrant's issue, the warrant ends.

## 111 Application by electronic communication and duplicate warrant

- (1) An application under section 109 may be made by phone, fax, email, radio, video conferencing or another form of electronic communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances including, for example, the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 109(2); but
  - (b) may be made before the written application is sworn.
- (3) The industrial magistrate may issue the warrant (the **original warrant**) only if the industrial magistrate is satisfied—
  - (a) it was necessary to make the application under subsection (1); and
  - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the industrial magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the industrial magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the industrial magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the authorised officer must complete a form of warrant including by writing on it—
      - (A) the industrial magistrate's name; and
      - (B) the date and time the magistrate issued the warrant; and

- (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***) is a duplicate of, and as effectual as, the original warrant.
  - (6) The authorised officer must, at the first reasonable opportunity, send to the industrial magistrate—
    - (a) the written application complying with section 109(2) and (3); and
    - (b) if the authorised officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.
  - (7) The industrial magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
    - (a) attach the documents to the original warrant; and
    - (b) give the original warrant and documents to the clerk of the court of the relevant industrial magistrates court.
  - (8) Despite subsection (5), if—
    - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
    - (b) the original warrant is not produced in evidence;
 

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
  - (9) This section does limit section 109.
  - (10) In this section—
 

***relevant industrial magistrates court***, in relation to an industrial magistrate, means the Industrial Magistrates Court the magistrate constitutes under the *Industrial Relations Act 1999*, section 291.<sup>26</sup>

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<sup>26</sup> *Industrial Relations Act 1999*, section 291 (Constitution of Industrial Magistrates Court)

## 112 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant or in compliance with section 109, 110 or 111<sup>27</sup> unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—  
*warrant* includes a duplicate warrant mentioned in section 111(5).

## 113 Warrants—procedure before entry

- (1) This section applies if an authorised officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place in the way stated in section 104;<sup>28</sup>
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 111(5).

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27 Section 109 (Application for warrant), 110 (Issue of warrant) or 111 (Application by electronic communication and duplicate warrant)

28 Section 104 (Production or display of identity card)



## **Division 3                      Powers of authorised officers after entry**

### **114      General powers of authorised officer after entering places**

- (1) This division applies to an authorised officer who enters a place.
- (2) However if an authorised officer, under section 107(2),<sup>29</sup> enters a place to ask the occupier's consent to enter premises, this division applies to the authorised officer only if the consent is given or the entry is otherwise authorised.
- (3) For performing an authorised officer's function under this Act, an authorised officer may do any of the following—
  - (a) search any part of the place;
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
  - (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
  - (d) copy, or take an extract from, a document at the place;
  - (e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for exercising a power under this division.

### **115      Power to require reasonable help or information**

- (1) An authorised officer may require the occupier of the place, or a person at the place, to give the authorised officer reasonable help, including, for example, by producing a document or giving information, to—
  - (a) exercise a power under this part; or
  - (b) work out whether this Act is being complied with.

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<sup>29</sup> Section 107 (Power to enter places)

- (2) When making the requirement, the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (3) A person required to give reasonable help under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—100 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.

## **Division 4                    Power of authorised officers to seize evidence**

### **116    Seizing evidence at place**

- (1) Subsections (2) to (5) apply if—
  - (a) an authorised officer is authorised to enter a place under section 107(1)<sup>30</sup> only with the consent of an occupier or a warrant; and
  - (b) the authorised person enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place if—
  - (a) the authorised officer believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.

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30 Section 107 (Power to enter places)

- (4) The authorised officer may also seize anything else at the place if the authorised officer believes—
- (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised officer may seize a thing at the place if the authorised officer believes it has just been used in committing an offence against this Act.
- (6) An authorised officer who lawfully enters a place under section 107(1), without the consent of the occupier and without a warrant, may seize a thing at the place if the authorised officer believes the thing is evidence of an offence against this Act.

## 117 Securing seized things

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted

## 118 Tampering with seized things

If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—40 penalty units.

## **119 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
  - (a) must be made by notice; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.
- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—100 penalty units.

## **120 Receipt for seized things**

- (1) As soon as possible after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt having regard to the thing's nature, condition and value.

## **121 Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the authorised officer who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

## **122 Dealing with forfeited things**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the general manager as the general manager considers appropriate.
- (2) Without limiting subsection (1), the general manager may destroy or dispose of the thing.

## **123 Return of seized things**

- (1) If a seized thing has not been forfeited, the authorised officer must return it to its owner—

- (a) at the end of 6 months; or
  - (b) if a proceeding involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing has been forfeited, the authorised officer must immediately return a seized thing to its owner if the authorised officer stops being satisfied its continued retention as evidence is necessary.

## **124 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Division 5 Other enforcement matters**

### **125 Authorised officer may require record kept under s 66**

- (1) An authorised officer may, by notice given to the employer, require the employer to give the authority the record that the employer is required to keep under section 66.<sup>31</sup>
- (2) The notice may state a reasonable time within which the record must be given to the authority.
- (3) The employer must comply with the notice within the stated time, unless the employer has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (4) It is not a reasonable excuse that giving the record stated in the notice might tend to incriminate the employer.
- (5) If a court finds an employer has contravened subsection (3), in addition to an order the court may make imposing a penalty,

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31 Section 66 (Employer to keep record for each worker)

the court may make another order the court considers appropriate.

- (6) The employer must comply with the order unless the employer has a reasonable excuse.

Maximum penalty for subsection (6)—40 penalty units.

## **126 False or misleading information**

- (1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

## **127 False or misleading document**

- (1) A person must not give to an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
- (a) informs the authorised officer, to the best of the person’s ability, how it is false or misleading; and
  - (b) gives the correct information to the authorised officer if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state the document made was ‘false or misleading’ to the person’s knowledge, without specifying which.

### 128 Obstructing authorised officers

- (1) A person must not obstruct an authorised officer in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) In this section—

*obstruct* includes hinder and attempt to obstruct.

### 129 Impersonation of authorised officer

A person must not pretend to be an authorised officer.

Maximum penalty—100 penalty units.

### 130 Notice of damage

- (1) This section applies if—

- (a) an authorised officer damages property when exercising or purporting to exercise a power; or  
(b) a person (the *other person*) acting under the direction of an authorised officer damages property.

- (2) The authorised officer must promptly give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.

- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's or other person's control, the authorised officer may state the belief in the notice.

- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.



(6) In this section—

*owner*, of property, includes the person in possession or control of it.

### **131 Compensation**

- (1) A person may claim compensation from the authority if the person incurs loss or expense because of the exercise or purported exercise of a power under division 2, 3 or 4.<sup>32</sup>
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under division 2, 3 or 4.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) However, a court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

### **132 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

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32 Division 2 (Procedure for entry), 3 (Powers of authorised officers after entry) or 4 (Power of authorised officers to seize evidence)

- (4) However, it is a defence for an executive officer to prove—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) In this section—
- executive officer*, for a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

### 133 Liability of directors for amounts

- (1) This section applies if—
- (a) a corporation is convicted of an offence against a provision of this Act; and
  - (b) a penalty for the offence is imposed on the corporation; and
  - (c) the amount of the penalty is not paid within the time required for its payment.
- (2) The liability to pay the penalty attaches to—
- (a) each individual who was a director of the corporation when the offence was committed; and
  - (b) each individual who is a director of the corporation when the penalty is imposed.
- (3) The liability to pay a penalty or an amount applies regardless of the status of the corporation, including for example, that the corporation is being or has been wound up.
- (4) If the liability attaches to 2 or more persons, the persons are jointly and severally liable.

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

- (1) This section applies to a person who—
  - (a) is a director of a board; or
  - (b) otherwise performs work for the authority.
- (2) The person must act honestly when exercising powers the person has in relation to the authority.  
Maximum penalty—40 penalty units.
- (3) The person must not make improper use of the office the person holds under this Act—
  - (a) to gain, directly or indirectly, an advantage for the person or another person; or
  - (b) to cause detriment to the authority.Maximum penalty—40 penalty units.
- (4) A person must not make improper use of information acquired by the person holding or having held an office under this Act—
  - (a) to gain, directly or indirectly, an advantage for the person or another person; or
  - (b) to cause detriment to the authority.Maximum penalty—40 penalty units.

### **135 Offence of improper disclosure of information**

- (1) A person who, directly or indirectly, records or discloses information obtained in the administration of this Act commits an offence, unless the disclosure is—
  - (a) authorised or required by this or another Act; or
  - (b) made in connection with the administration of this Act or a corresponding law; or
  - (c) made with the consent of the person to whom the information relates; or
  - (d) ordered by a court in relation to proceedings before it; or
  - (e) authorised by the Minister; or

(f) made with other lawful excuse.

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 in the administration of this Act.
- (3) For subsection (1)(e), 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.

*Example of a purpose for which information may be disclosed—*

Sharing industry and payroll data with other government agencies to facilitate compliance with this Act.

- (4) In this section—

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

## **136 Protection of person from dismissal**

An employer must not dismiss a person engaged by the employer because the person has given information under this Act to the authority or an authorised officer.

Maximum penalty—40 penalty units.

# **Part 10 Proceedings for offences**

## **137 Proceedings for offences**

- (1) A prosecution for an offence against this Act is by way of a summary proceeding before an industrial magistrate.
- (2) A proceeding for an offence against this Act must start—
  - (a) within 1 year after the commission of the offence; or

- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (3) A person dissatisfied with a decision of an industrial magistrate in a proceeding brought under subsection (1) who desires to appeal must appeal to the industrial court.
- (4) The *Industrial Relations Act 1999* applies with any necessary changes to a proceeding before an industrial magistrate brought under subsection (1) and to a proceeding on appeal before the industrial court brought under subsection (3).
- (5) In this section—  
*person dissatisfied*, with a decision in a proceeding, means—
  - (a) a party to the proceeding; or
  - (b) a person bound by the decision; or
  - (c) if an authorised officer started the proceeding—any authorised officer.

### **138 Powers of industrial magistrate**

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

### **139 Evidentiary certificates about returns**

- (1) In a proceeding under this Act, or another Act prescribed under a regulation, 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 that subsection.
- (3) In this section—  
*stated* means stated in the certificate.

#### **140 Evidentiary certificates about levy payments**

- (1) In a proceeding under this Act, or another Act prescribed under a regulation, 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 that subsection.
- (3) In this section—  
*stated* means stated in the certificate.

#### **141 Other evidentiary certificates**

- (1) In a proceeding under this Act, or another Act prescribed under a regulation, a certificate signed by the general manager is evidence of any of the following matters stated in the certificate—
  - (a) a stated document is—
    - (i) an appointment or approval, or a copy of an appointment or approval; or

- (ii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
  - (b) on a stated day, a stated person was or was not listed in the register of employers or the register of workers;
  - (c) on a stated day, an application for registration as an employer under section 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 that subsection.
- (3) In this section—  
*stated* means stated in the certificate.

## 142 Other evidentiary provisions

- (1) In a proceeding under this Act, or another Act prescribed under a regulation—
- (a) an appointment of a person under this Act may be presumed to be properly made unless a party, by reasonable notice, requires proof of the appointment; and
  - (b) a signature purporting to be the signature of a person appointed under this Act is evidence of the signature it purports to be.
- (2) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

## 143 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**

### **144 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 cleaning work in the contract cleaning industry 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 an entity in the other State with similar functions; 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 under subsection (1).

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

- (1) A regulation may—
  - (a) declare a State for which an agreement under section 144 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 cleaning work in the contract cleaning industry in the other State.

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

- (1) The general manager may delegate all or any of the general manager's powers under this Act to an appropriately qualified member of the Building and Construction Authority's staff.
- (2) In this section—



***appropriately qualified*** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

The level at which a person is employed within the Building and Construction Authority.

### **147 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 of the board; or
- (c) the general manager; or
- (d) an authorised officer; or
- (e) another person involved in the administration of this Act.

### **148 Authority may indemnify person administering Act**

The authority may indemnify a person, engaged in giving effect to this Act, for the reasonable costs associated with defending a criminal proceeding, if the person is found not guilty of the offence to which the proceeding relates.

### **149 Approved forms**

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

### **150 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.

- (2) Without limiting subsection (1), a regulation may be made imposing a penalty, not exceeding 20 penalty units, for a contravention of a regulation.

## Part 12 Transitional provisions

### 151 Relationship with other Acts, awards etc

A right or entitlement to long service leave a registered worker has or may have under this Act does not limit any right or entitlement the person has or may have under another Act, award or relevant industrial agreement.

*Note—*

Section 74 (Long service leave not payable in particular cases) prevents a registered worker from taking, or being paid for, an entitlement under this Act if the registered worker has already taken, or been paid for, the entitlement under another Act, award or relevant industrial agreement.

### 152 Funds borrowed from Building and Construction Authority

- (1) The funds of the authority under section 40(1)<sup>33</sup> include funds borrowed from the Building and Construction Authority (*borrowed funds*).
- (2) The authority must repay the following amounts to the Building and Construction Authority—
- (a) the amount of any borrowed funds;
  - (b) an amount of interest calculated at the monthly yield rate published by the Reserve Bank of Australia in relation to government bonds for a 10 year period on borrowed funds that have not been repaid.
- (3) The amounts mentioned in subsection (2) must be repaid, as agreed between the authority and the Building and

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33 Section 40 (Funds of authority)

Construction Authority, but in any event, no later than the day this section expires.

- (4) This section expires 5 years after it commences.

### **153 Initial proposed budget for 2005-2006 financial year**

- (1) Before 1 August 2005, the authority must give the Minister the details of its proposed budget for the remainder of the 2005-2006 financial year.
- (2) A budget given to the Minister under subsection (1) is to be dealt with as if it were given to the Minister under section 41(1).<sup>34</sup>

### **154 Registration as an employer if employer at commencement**

- (1) This section applies if a person is an employer at the commencement of section 53<sup>35</sup> or becomes an employer within 28 days after the commencement.
- (2) Despite section 53(1), the person need not comply with that subsection until 35 days after the commencement.

## **Part 13 Consequential amendment**

### **155 Amendment of other Act**

Schedule 1 amends the Act mentioned in it.

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<sup>34</sup> Section 41 (Proposed budget and progress budget reports)

<sup>35</sup> Section 54 (Application for registration as a registered employer)

## **Schedule 1      Amendment of other Act**

section 155

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

**1      Section 32(2)(e), after ‘Act’—**

*insert—*

*‘or the Contract Cleaning Industry (Portable Long Service  
Leave) Act 2005’.*

## Schedule 2      Dictionary

### section 5

**administration**, of this Act, includes enforcement of this Act.

**aggrieved person** see section 91(1).

**application for reconsideration** see section 91(1).

**approved form** means a form approved by the general manager under section 149.

**authorised officer** means a person appointed under section 101(1) or the general manager.

**authority** means the Contract Cleaning Industry (Portable Long Service Leave) Authority established under section 13.

**award** means—

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

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

**Building and Construction 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 chairperson of the board appointed under section 17(1)(a).

**cleaning work** see section 6.

**commission** see section 97(1).

**contract cleaning industry** see section 7.

**conviction**, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

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

### Schedule 2 (continued)

**corresponding law** means a law declared to be a corresponding law under section 145(1)(b).

**deputy chairperson** means the deputy chairperson of the board appointed under section 17(1)(b).

**employer** see section 8.

**engagement period**, for a worker, see section 59.

**find a person guilty** of an offence includes accept a plea of guilty for the offence.

**general manager** see section 32.

**information notice** see section 10.

**levy** means the long service leave levy imposed under section 82.

**levy amount** means the total of the following to the extent applicable—

- (a) the amount of long service leave levy including an amount payable under section 68 or 85;
- (b) an additional amount payable in relation to the levy under section 65;
- (c) an amount payable as interest under section 87.

**notice** means written notice.

**occupier**, of a place, means the owner or lessee of the place or a person apparently in charge of the place.

**ordinary wages**, for a person who is or has been a worker, means the amount of wages paid or payable to the person for cleaning work in the contract cleaning industry under the award or agreement applying to the person for the work, and includes the following payments if payable to the person under the award or agreement—

- (a) over-award payments;
- (b) any weekend and public holiday penalty rates earned by shift workers on normal rostered shifts forming the

## Schedule 2 (continued)

ordinary hours of duty, other than when worked as overtime;

- (c) allowances relating to the person's work, other than allowances for expenses incurred by, or for the use of, equipment or a motor vehicle provided by the person.

**original decision** see section 90(2).

**premises** does not include—

- (a) the grounds surrounding a building or house; or  
 (b) a swimming pool and the grounds surrounding the swimming pool.

**Queensland** includes Queensland waters.

*Note—*

For other laws dealing with the effect of legislation in Queensland waters see—

- *Acts Interpretation Act 1954*, section 9(1)
- *Crimes at Sea Act 2001*
- *Off-shore Facilities Act 1986*
- *Petroleum (Submerged Lands) Act 1982*

**reciprocating State** means a State declared to be a reciprocating State under section 145(1)(a).

**reconsidered decision** see section 91(7)(c).

**registered employer** means a person who is registered under section 55.

**registered worker** means a person who is registered under section 47 or 48.

**register of employers** see section 51.

**register of workers** see section 44.

**relevant industrial agreement** means—

- (a) a certified agreement, as defined under the *Industrial Relations Act 1999*; or

Schedule 2 (continued)

- (b) an enterprise flexibility agreement, continued in force under the *Industrial Relations Act 1999*; or
- (c) an industrial agreement, as defined under the *Industrial Relations Act 1999*; or
- (d) a Queensland workplace agreement, under the *Industrial Relations Act 1999*, chapter 6, part 2.<sup>36</sup>

***return period*** means a period prescribed under a regulation.

***worker*** see section 9.

***written reference*** see section 28(6).

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<sup>36</sup> *Industrial Relations Act 1999*, chapter 6 (Agreements), part 2 (Queensland workplace agreements)