

# Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 No 122

[2010-122]



New South Wales

## Status Information

### Currency of version

Current version for 14 July 2023 to date (accessed 18 May 2024 at 23:37)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Industrial Relations Amendment Act 2023 No 41](#) (not commenced)

### Responsible Minister

- Minister for Industrial Relations

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 26 April 2024

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## Contents

<b>Long title</b> .....	8
<b>Part 1 Preliminary</b> .....	8
1 Name of Act .....	8
2 Commencement .....	8
3 Definitions .....	8
4 Meaning of “cleaning work” .....	10
5 Meaning of “employee” .....	11
6 Meaning of “employer” .....	11
7 Meaning of “worker” .....	11
8 Declaration by Minister—coverage of Act .....	12
9 Constitution of Long Service Leave Committee .....	12
<b>Part 2 Registration</b> .....	13
<b>Division 1 The registers</b> .....	13
10 Corporation must keep registers .....	13
11 Employers register .....	13
12 Employer’s registration day .....	14
13 Workers register .....	14
14 Worker’s registration day .....	15
15 Inspection of registers .....	15

<b>Division 2 Registration of employers</b>	15
16 Registration	15
17 Application for registration by employers	15
18 Dealing with applications for registration as an employer	16
19 Certificate of registration for employers	16
20 Registered employer to notify change of details	17
<b>Division 3 Registration of workers</b>	17
21 Registration	17
22 Application for registration by workers	17
23 Application by employers for registration of employee	18
24 Dealing with applications for registration as registered worker	18
25 Corporation may register worker without application	18
26 Annual statements for workers	19
27 Registered worker to notify inaccuracies	19
<b>Division 4 Cancellation and suspension of registration</b>	19
28 Cancellation of worker's registration	19
29 Suspension of worker's registration	20
30 Reinstatement of cancelled registration	21
31 Cancellation of employer's registration	22
<b>Division 5 Notices</b>	22
32 Notice of registration decisions	22
<b>Part 3 Service credits</b>	23
33 Meaning of "engagement period"	23
34 Service credit	23
35 Limitations on crediting service	23
36 Foundation worker service credit	24
37 Service credit for breaks in engagement periods	24
38 Service credit—insolvent employer	24
<b>Part 4 Returns and records</b>	25

<b>Division 1 Returns</b>	25
39 Returns by employers	25
40 Exemption from lodging return	26
41 Returns by contractors who are registered workers	26
<b>Division 2 Review of ordinary remuneration</b>	27
42 Review of ordinary remuneration by Corporation	27
43 Notice of Corporation's decision on review of remuneration	27
44 Effect of variation of ordinary remuneration	27
45 Variation of ordinary remuneration	28
<b>Division 3 Records</b>	28
46 Employers to keep records	28
47 Registered contractors to keep records	29
47A Power to require production of employee records	30
47B Power to take possession of records to be used as evidence	30
<b>Part 5 Long service leave levy</b>	30
48 Determination of levy—employers	30
49 Determination of levy—contractors	31
50 Levy payments by employers	31
51 Levy payments by registered contractors	31
52 Interest on, and extension of time for payment, of levy	31
53 Assessment of unpaid levy	32
54 Authorised agents for collection of levies	32
<b>Part 6 Long service leave</b>	32
55 Long service leave	32
56 Years of recognised service	33
57 Long service leave formula—contract cleaning industry	33
58 Amount of leave—contract cleaning industry	33
59 Grant of leave by employers—contract cleaning industry	34
60 Payments for leave	34
61 Long service leave not payable if payment previously made	35
62 Prohibition on payments in lieu of leave	35

63 Entitlement to pro rata payment instead of leave in limited circumstances .....	35
64 Pro rata payments instead of leave .....	35
65 How are leave entitlements to be worked out? .....	36
66 Leave payments to employee for service as a registered worker.....	36
67 Leave payments to a contractor for service as a registered worker .....	37
68 Deemed minimum and maximum rates of pay .....	38
69 Public holidays not to count as leave .....	38
70 Corporation may pay if employer insolvent.....	38
71 Payment may be deferred .....	39
72 Corporation's liability confined to long service leave .....	39

## **Part 7 Appeals to Committee .....**

### **Division 1 General.....**

73 Appeals—general provisions.....	39
74 Hearing and determination of appeals by 2 or more members .....	40
75 Notice of appeal decisions.....	40
76 Personal representative of deceased person may appeal on person's behalf .....	40

### **Division 2 Rights of appeal.....**

77 Appeals against refusal to register as employer.....	40
78 Appeals against refusal to register as registered worker.....	41
79 Appeal against cancellation of employer's registration .....	41
80 Appeal against cancellation of worker's registration .....	41
81 Appeals against refusal to grant exemption or revocation of exemption .....	42
82 Appeal in relation to payment of interest on long service levies etc .....	42
83 Appeals against levy assessments .....	43
84 Appeal against limitation of long service payment by operation of deemed minimum and maximum rates of pay .....	43

## **Part 8 Enforcement .....**

### **Division 1 Authorisation and identification of inspectors .....**

85 Definition .....	43
86 Authorisation of inspectors .....	43

87 Identification of inspectors .....	43
<b>Division 2 Powers of entry and inspection</b> .....	44
88 Power to enter premises .....	44
89 Entry into residential premises only with permission or warrant .....	44
90 Search warrants .....	44
91 Powers to inspect and seize things .....	45
92 Dealing with seized things.....	46
93 Assistance to be given to inspectors .....	46
94 Provisions relating to requirements to furnish records, information or answer questions .....	46
95 Offences under this Part .....	47
<b>Division 3 Other enforcement matters</b> .....	48
96 Service of documents .....	48
97 Authentication of certain documents by Corporation .....	48
98 Corporation may require applicant under section 17 to provide further information or evidence ...	48
99 Corporation may require applicant under section 22 or 23 to provide further information or evidence .....	49
100 Notice requiring information or documents .....	49
101 False statements .....	49
102 Disclosure of information.....	50
<b>Division 4 Proceedings for offences and debt recovery</b> .....	50
103 Nature of proceedings for offences.....	50
103A Penalty notices .....	50
104 Offences by corporations.....	51
105 Recovery of charges etc by Corporation.....	51
106 Orders to make levy payments.....	51
107 Certificate as to payment of levies .....	52
<b>Part 9 Relationship to other laws</b> .....	52
108 Definition .....	52
109 Benefits under other laws—election .....	52
110 Benefits under other laws—reimbursement of employer .....	52
111 Reimbursement for certain payments under Long Service Leave Act 1955 .....	53

**Part 10 Reciprocal arrangements** .....53

112 Reciprocal agreements for corresponding laws .....53

113 Payment by Corporation on reciprocal authority’s behalf.....54

114 Payments by reciprocal authority on Corporation’s behalf .....54

114A Exchange of information .....54

**Part 11 Miscellaneous** .....55

115 Personal liability .....55

116 Regulations.....56

117 Review of Act.....56

118 (Repealed) .....56

**Schedule 1 Constitution and procedure of Committee** .....56

**Schedule 2 Savings, transitional and other provisions** .....61

**Schedule 3 (Repealed)** .....61

# Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 No 122



New South Wales

An Act to establish a scheme for portability of long service leave in the contract cleaning industry; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Contract Cleaning Industry \(Portable Long Service Leave Scheme\) Act 2010](#).

### 2 Commencement

This Act commences on 1 July 2011.

### 3 Definitions

(1) In this Act—

**approved form** means in the form approved by the Corporation.

**cleaning work**—see section 4.

**Committee** means the Contract Cleaning Industry Long Service Leave Committee constituted by section 9.

**contract cleaning industry** means—

- (a) in relation to New South Wales—the industry in which employers provide cleaning work, and minor property maintenance work that is incidental or peripheral to such cleaning work, to other people through the provision of workers' services, and
- (b) in relation to a reciprocating State or Territory—the contract cleaning industry within the meaning of the corresponding law of the State or Territory.

**contractor** means a person (other than an employee) who—



(a) performs work for another person for fee or reward on the person's own account, or

(b) is declared to be a contractor for the contract cleaning industry under section 8.

**Corporation** means the Long Service Corporation constituted under the [Long Service Corporation Act 2010](#).

**corresponding law** means a law of another State or a Territory that makes provision with respect to long service leave and that is declared by the regulations to be a corresponding law.

**day**, in relation to a worker, means 24 hours or such other period as is prescribed by the regulations as a day for a worker.

**employee**—see section 5.

**employer**—see section 6.

**employers register** means the register referred to in section 11.

**employer's registration day**—see section 12.

**engagement period** for a registered worker—see section 33.

**exercise** a function includes perform a duty.

**foundation worker**—see section 21 (2) and (3).

**function** includes a power, authority or duty.

**Fund** means the Contract Cleaning Industry Long Service Leave Fund maintained under the [Long Service Corporation Act 2010](#).

**inspector** means a person authorised under section 86 to be an inspector for the purposes of Part 8.

**levy** means the long service leave levy imposed under Part 5.

**long service leave formula**—see section 57.

**ordinary remuneration** for a person means the amount paid or payable to the person for cleaning work, other than any amounts for the following—

(a) overtime,

(b) expenses incurred by the person,

(c) the use of materials, equipment or a motor vehicle provided by the person.

**premises** includes the whole or any part of a building, structure or place, whether built on or not.

**reciprocal authority** means the entity under a corresponding law that administers the scheme of long service benefits established by that law.

**reciprocating State or Territory** means a State or Territory with which a reciprocal agreement within the meaning of section 112 is in force.

**recognised service**, for a registered worker, means the total number of days for all engagement periods entered in the workers register for the worker.

**registered employer** means an employer who is registered as an employer under Part 2.

**registered worker** means a person who is registered as a worker under Part 2.

**Note—**

A worker may be a contractor or an employee.

**return period** means—

- (a) a 3-month period, ending at the end of 31 March, 30 June, 30 September or 31 December in any year, during which a worker performs cleaning work, or
- (b) such other period as may be prescribed by the regulations.

**Secretary** means the Secretary of the Department of Finance, Services and Innovation.

**service**, for a registered worker for the contract cleaning industry, means service in the industry.

**worker**—see section 7.

**workers register** means the register referred to in section 13.

**worker's registration day**—see section 14.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

#### **4 Meaning of “cleaning work”**

(1) **Cleaning work** is—

- (a) work that has, as its only or main component, the bringing of premises into, or

maintaining premises in, a clean condition, or

(b) work, or an activity, declared to be cleaning work under section 8.

(2) Without limiting subsection (1) (a), work referred to in that paragraph includes the collection of trolleys (other than trolley collection of a kind described by the regulations) and hygiene and pollution control.

## **5 Meaning of “employee”**

(1) A person is an **employee** for the contract cleaning industry if the person is—

(a) employed by an employer for that industry, or

(b) declared to be an employee for that industry under section 8.

(2) In this section—

**employed** includes employed as—

(a) a full-time employee, or

(b) a part-time employee, or

(c) a casual employee.

## **6 Meaning of “employer”**

(1) An **employer** for the contract cleaning industry is a person who—

(a) employs one or more persons to perform cleaning work in that industry, or

(b) is declared to be an employer for that industry under section 8.

(2) The following are not employers for the purposes of subsection (1)—

(a) the Commonwealth,

(b) the State,

(c) a local government authority,

(d) a company whose only workers are directors, if each of the directors participates in the management of the company or shares its profits,

(e) a person to whom subsection (1) (a) applies who is excluded by the regulations from being an employer.

## **7 Meaning of “worker”**

(1) A **worker** for the contract cleaning industry is a person who—

- (a) is engaged by an employer under a contract of service to perform cleaning work in the industry, or
  - (b) is a contractor who performs cleaning work in the industry.
- (2) A **worker** includes a person who is engaged both to perform cleaning work and to supervise other workers in the contract cleaning industry, whether or not the person is known as a supervisor, leading hand or another title.
- (3) However, **worker** does not include a person who performs work in the contract cleaning industry—
- (a) whose only or main duties are managerial or clerical, or
  - (b) under a contract of service with a partnership if the person is a partner and participates in the management of the partnership or shares the profits, or
  - (c) under a contract of service with the Commonwealth, the State or a Territory or a local government authority, or
  - (d) under a contract, whether or not the contract is a contract of service, with a corporation of which the person is a director, or
  - (e) under a contract, whether or not the contract is a contract of service, with a trust of which the person is a trustee.

## **8 Declaration by Minister—coverage of Act**

- (1) The Minister may, by order published on the NSW legislation website, declare that for this Act—
- (a) a person is an employer for the contract cleaning industry, or
  - (b) a person is a contractor for that industry, or
  - (c) a person is an employee, or an employee of a stated employer, for that industry, or
  - (d) work, or an activity, is cleaning work.
- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the [Interpretation Act 1987](#) apply to an order under this section in the same way as those sections apply to statutory rules.

## **9 Constitution of Long Service Leave Committee**

- (1) There is constituted by this Act the Contract Cleaning Industry Long Service Leave Committee.
- (2) The Committee is to consist of the following members—

- (a) the Secretary or a nominee of the Secretary,
  - (b) 2 persons appointed by the Minister, on the nomination of Unions NSW, to represent that body,
  - (c) 2 persons appointed by the Minister, on the nomination of United Workers Union (NSW Branch), to represent that body,
  - (d) 2 persons appointed by the Minister, on the nomination of the Building Service Contractors Association, to represent that body,
  - (e) 2 persons appointed by the Minister who, in the opinion of the Minister, have knowledge of, and experience in, the contract cleaning industry.
- (3) The person referred to in subsection (2) (a) is to be the Chairperson of the Committee.
- (4) If a nomination referred to in subsection (2)(b), (c) or (d) is not made by a body within such time as the Minister allows, the Minister may appoint a person the Minister considers suitable to represent that body in place of the person required to be so nominated.
- (5) Schedule 1 contains provisions relating to members of the Committee.

## **Part 2 Registration**

### **Division 1 The registers**

#### **10 Corporation must keep registers**

- (1) The Corporation must keep the following registers under this Act—
- (a) an employers register,
  - (b) a workers register.
- (2) Subject to this Act, the registers are to be kept in the form and manner, and are to contain such particulars, as the Corporation determines.

#### **11 Employers register**

- (1) The Corporation is to enter the following information in the employers register in relation to a person it registers as an employer for the contract cleaning industry—
- (a) the employer's name,
  - (b) the employer's trading name (if any),
  - (c) the employer's ABN (if any),
  - (d) the address of the employer's principal place of business,

(e) if the employer is a corporation—

(i) the address of the corporation's registered office, and

(ii) the corporation's ACN,

(f) the employer's registration day,

(g) if the person is no longer an employer—the day the person stopped being an employer.

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

## **12 Employer's registration day**

For the purposes of section 11 (1) (f), the day on which a person becomes a registered employer (the **employer's registration day**) is the day on which the Corporation received the application for registration under section 17.

## **13 Workers register**

(1) The Corporation is to enter the following information (or so much of it as it has or is reasonably able to obtain) in the workers register in relation to a person it registers as a worker for the contract cleaning industry—

(a) the worker's name (entered, in the case of a foundation worker, as the name of a foundation worker),

(b) if the worker is an employee—each employer for whom the employee works,

(c) if the worker is a contractor—the person's ABN (if any),

(d) the number of days of service with which the worker is credited under this Act,

(e) the total ordinary remuneration of the worker for work performed by the worker,

(f) the worker's entitlement to long service leave,

(g) details of the long service leave granted to, or taken by, the worker, or payment instead of long service leave made to the worker, under this Act or the [Long Service Leave Act 1955](#),

(h) the worker's registration day,

(i) if the worker no longer performs cleaning work in the contract cleaning industry—the day that he or she stopped performing such work.

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

- (3) The Corporation may, for the purposes of entering in the workers register the information referred to in subsection (1) (e), rely on the information contained in any return furnished under Part 4 or such other information as the Corporation thinks fit.

#### **14 Worker's registration day**

- (1) For the purposes of section 13 (1) (h), the day on which a person becomes a registered worker (the ***worker's registration day***) is—
- (a) if the person applies for registration under section 22 and the application is granted—the day on which the Corporation receives the application, or
  - (b) if an employer of the person applies for registration of the person under section 23 and the application is granted—the day on which the Corporation receives the application, or
  - (c) if the Corporation receives other information indicating the person is a worker as mentioned in section 25—the day the Corporation receives the information.
- (2) However, if the Corporation is satisfied the person was a worker for a period before the worker's registration day, the Corporation may nominate an earlier day as the day on which the person became a registered worker.
- (3) The Corporation must not nominate a day—
- (a) that is more than 2 full financial years before the person's registration day, unless the Corporation is satisfied special circumstances exist, and
  - (b) in any event—that is earlier than 1 July 2011.

#### **15 Inspection of registers**

An employer, a registered worker, or a person acting on behalf of the employer or registered worker, may inspect, and obtain a certified copy of, an entry in the register that relates to the employer or worker.

### **Division 2 Registration of employers**

#### **16 Registration**

The Corporation may register a person as an employer on application by the person under section 17.

#### **17 Application for registration by employers**

- (1) In this section—
- prescribed period***, in relation to an employer for the contract cleaning industry, means the following—

- (a) for a person who becomes an employer on or after the commencement of this Act—one month after becoming an employer,
    - (b) for a person who is an employer immediately before the commencement of this Act—one month after that commencement.
  - (2) An employer for the contract cleaning industry must apply to the Corporation for registration as an employer not later than the end of—
    - (a) the prescribed period for the employer, or
    - (b) such additional time as the Corporation allows.
- Maximum penalty—50 penalty units.
- (3) An application must be in the approved form.
  - (4) 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 46 (Employers to keep records) may be inspected during normal business hours, and
    - (b) to give other information or produce documents the Corporation considers are relevant to the administration of this Act.

**Note—**

The Corporation may require an applicant to provide further information or evidence—see section 98.

## **18 Dealing with applications for registration as an employer**

The Corporation must—

- (a) register a person who makes an application under section 17 as an employer for the contract cleaning industry if satisfied the person is an employer for that industry, or
- (b) in any other case—refuse to register the person as an employer.

**Note—**

See section 32 in relation to notification requirements concerning registration decisions and section 77 with respect to appeals.

## **19 Certificate of registration for employers**

- (1) The Corporation must give each person registered as an employer for the contract



cleaning industry a certificate of registration that includes—

- (a) the registration information mentioned in section 11 (Employers register), and
- (b) the employer's registration day for the person.

- (2) If satisfied that an employer's certificate of registration has been stolen, lost or destroyed, the Corporation must give the employer a replacement certificate of registration.
- (3) An employer's certificate of registration is evidence of the matters stated in the certificate.

## **20 Registered employer to notify change of details**

- (1) If the details shown on a registered employer's certificate of registration change, the employer must, not later than 7 days after the change, give the Corporation written notice of the change.

Maximum penalty—5 penalty units.

- (2) The Corporation must give the employer an amended certificate of registration.

## **Division 3 Registration of workers**

### **21 Registration**

- (1) The Corporation may register a person as a worker—
  - (a) on application by the person under section 22, or
  - (b) on application by the person's employer under section 23, or
  - (c) on the Corporation's own initiative under section 25.
- (2) A person who is registered within 6 months after the commencement of this Act (the **foundation period**) is to be entered on the register as a foundation worker.
- (3) In addition, the Corporation may enter a person who is registered (whether on application or on the Corporation's own initiative) more than 6 months after the commencement of this Act on the register as a foundation worker if the Corporation is satisfied that there are exceptional circumstances that warrant entry after the end of the foundation period.

### **22 Application for registration by workers**

- (1) A person may apply to the Corporation for registration as a worker for the contract cleaning industry.

**Note—**

Workers who are registered within 6 months after the commencement of the Act are entered on the register as foundation workers and credited with 365 days of service.

- (2) An application under this section must be in the approved form.

**Note—**

The Corporation may require the applicant to provide further information or evidence—see section 99.

## **23 Application by employers for registration of employee**

- (1) This section applies if a person who is not a registered worker is employed by an employer in the contract cleaning industry and does not apply for registration under section 22 before the end of 3 months after the day on which the person starts to work for the employer.
- (2) The employer must apply to the Corporation for registration of the employee as a worker for the contract cleaning industry within 14 days after the end of the 3-month period.

Maximum penalty—20 penalty units.

- (3) The application must be in the approved form.

**Note—**

The Corporation may require the applicant to provide further information or evidence—see section 99.

## **24 Dealing with applications for registration as registered worker**

If an application is made under section 22 or 23 for registration of a person as a worker for the contract cleaning industry, the Corporation must—

- (a) if satisfied that the person is a worker for the contract cleaning industry (or is a worker for the contract cleaning industry who is eligible to be entered on the register as a foundation worker)—register the person as a worker for the industry (or as a foundation worker), or
- (b) in any other case—refuse to register the person as a worker for the industry.

**Note—**

See section 32 in relation to notification requirements concerning registration decisions and section 78 in relation to appeals against such decisions.

## **25 Corporation may register worker without application**

The Corporation may decide to register a person as a worker in the contract cleaning industry if—

- (a) the Corporation becomes aware of information (other than because of an application under this Part) indicating that the person is, or was, a worker for the industry, and

- (b) the Corporation is satisfied that the person should be registered as a worker for the industry.

**Note—**

The Corporation must give notice of the registration to the worker—see section 32.

## **26 Annual statements for workers**

- (1) The Corporation must, as soon as practicable after 31 July in each year, place a statement on its website setting out the following information in relation to each registered worker—
  - (a) the number of days of service, from the worker's registration day to the end of the previous financial year, with which the worker has been credited in the workers register,
  - (b) the number of days of service that the worker has been credited with for the previous financial year,
  - (c) the total ordinary remuneration paid to the worker during the previous financial year by a registered employer,
  - (d) if the worker is a contractor—the total amount paid by the contractor under section 51 (Levy payments by registered contractors) for the previous financial year.
- (2) The Corporation must ensure that the annual statement relating to a registered worker referred to in subsection (1) may be readily accessed by the worker.
- (3) The Corporation must give a registered worker a written copy of the annual statement relating to the worker if requested to do so by the worker.

## **27 Registered worker to notify inaccuracies**

If the details shown on an annual statement relating to a registered worker under section 26 are inaccurate, the worker must, not later than 6 months after the statement is placed on the Corporation's website, give the Corporation written notice of the correct details.

# **Division 4 Cancellation and suspension of registration**

## **28 Cancellation of worker's registration**

- (1) The Corporation may at any time cancel the registration of a worker if it is satisfied that the person concerned is not a worker and that the person's application to become a registered worker should have been refused.
- (2) The Corporation must cancel the registration of a registered worker if the person

concerned has not been credited under this Act or a corresponding law with at least one day's service for 4 consecutive years.

- (3) For the purposes of subsection (2), any day prescribed by the regulations as a non-service day is to be treated as a day's service.
- (4) The Corporation must also cancel the registration of a worker—
  - (a) on the making of any payment in accordance with section 63 (Entitlement to pro rata payment instead of leave in limited circumstances) in respect of the worker, or
  - (b) at the request of the worker.
- (5) The cancellation of the registration of a registered worker under subsection (1) takes effect—
  - (a) on the expiration of the period of 42 days after the Corporation notifies the registered worker of the cancellation, or
  - (b) if an appeal under section 80 is lodged against the cancellation within that period—on the date the appeal is withdrawn or the cancellation is confirmed.
- (6) If the registration of a person as a worker is cancelled under subsection (1) or (2)—
  - (a) the person stops being a registered worker on the day the registration is cancelled, and
  - (b) the person is not entitled to apply for, or to be paid an amount for long service leave for, any days of service entered in the register before the day the person stopped being a registered worker.
- (7) However, subsection (6) (b) does not apply if the person would, but for the person's ceasing to be registered, have been entitled to payment for a period under section 63 (Entitlement to pro rata payment instead of leave in limited circumstances).
- (8) Regulations may be made for or with respect to the refund of levies on cancellation of the registration of a worker.

**Note—**

See section 32 in relation to notification requirements concerning registration decisions and section 80 with respect to appeals against cancellation of a worker's registration.

## **29 Suspension of worker's registration**

- (1) The Corporation may suspend the registration of a worker who has been credited with at least 1825 days of service in the register of workers if 1460 non-service days have elapsed since the last date in respect of which the worker was credited with service under this Act or under a corresponding law.

- (2) For the purposes of subsection (1), a **non-service day** is a day prescribed by the regulations as a non-service day for the purposes of this section.
- (3) The Corporation may restore a suspended registration at any time.
- (4) While the registration of a worker is suspended—
  - (a) the worker is not to be credited in the workers register with any service under this Act (being service during the period of suspension), and
  - (b) the Corporation is not required to give any annual statement under section 26 to the worker, and
  - (c) subject to sections 62 (Prohibition on payments in lieu of leave) and 63—
    - (i) the worker is entitled to apply for and be paid any long service payment in respect of any days' service then credited to the worker in the workers register, and
    - (ii) if the worker has died (whether before or after the worker's registration was suspended)—the personal representative of the worker is entitled to apply for and be paid any long service payment in respect of any days' service then credited to the worker in the workers register.
- (5) An application under subsection (4) (c) (ii) may not be made more than 2 years after the date of suspension or the date of the worker's death (whichever is the later).
- (6) If a suspended registration is restored under subsection (3), any days' service under this Act that are credited to the worker as at the date of the suspension are to be restored.

### **30 Reinstatement of cancelled registration**

- (1) The registration of a person as a worker that has been cancelled in accordance with section 28 may (if the person is eligible) be reinstated at any time within 6 years after the date of cancellation if the Corporation is satisfied that special circumstances exist warranting reinstatement of the person's registration.
- (2) The Corporation may reinstate the registration of a person as a worker that has been cancelled under section 28 (2) if the Corporation is satisfied that the person has been credited with a period of service under a corresponding law within the period of 4 years ending on the day on which the person's registration was cancelled.
- (3) If a person's registration as a worker is reinstated under this section, this Act applies in relation to the person as if the person's registration as a worker had not been cancelled.
- (4) This section does not affect any other right that a person whose registration has been

cancelled may have to again become a registered worker.

### **31 Cancellation of employer's registration**

- (1) The Corporation may at any time cancel the registration of an employer if it is satisfied that the person concerned is not an employer and that the person's application to become a registered employer should have been refused.
- (2) If a registered employer stops engaging workers to perform cleaning work in the contract cleaning industry, the registered employer may apply to the Corporation for cancellation of registration.
- (3) The application is to be in the approved form.
- (4) The Corporation must cancel the registration if it is satisfied that the person concerned has stopped engaging workers to perform cleaning work in the contract cleaning industry.
- (5) The person stops being a registered employer on the day the registration is cancelled but must pay any levy payable under section 50 that was due to the Corporation before that day.

**Note—**

See section 32 in relation to notification requirements concerning registration decisions and section 79 with respect to appeals.

## **Division 5 Notices**

### **32 Notice of registration decisions**

- (1) The Corporation must, not later than 14 days after making a decision under this Part, give written notice of its decision to—
  - (a) the applicant, or
  - (b) if it has decided to register a person under this Part on its own initiative—the person registered, or
  - (c) if it has cancelled the registration of a person—the person.
- (2) If the decision is to register a person as a worker, the notice must state the worker's registration day.
- (3) If the Corporation's decision is to refuse to register or to cancel the registration of the person, the notice must include—
  - (a) an explanation for the decision, and
  - (b) a statement of the effect of section 77, 78, 79 or 80 (as the case requires).

## Part 3 Service credits

### 33 Meaning of “engagement period”

- (1) An **engagement period**, for a worker who is an employee, is a period that—
  - (a) starts on the day the person is engaged by an employer as a worker, and
  - (b) stops on the day the person stops being engaged by an employer as a worker.
- (2) For the purposes of 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) An **engagement period**, for a worker who is a contractor, is a period that—
  - (a) starts on the day the person performs cleaning work as a contractor in the contract cleaning industry, and
  - (b) stops on the day the person stops performing cleaning work as a contractor in the contract cleaning industry.
- (4) An **engagement period**, for a worker, is also taken to include any day that the person who is or was a worker did not perform cleaning work—
  - (a) because of incapacity for an injury for which the worker is entitled to compensation under the [Workers Compensation Act 1987](#), or
  - (b) if the worker is an employee—because the worker had been dismissed by the person’s employer to ensure that the person did not take long service leave during the worker’s employment.

### 34 Service credit

A registered worker is to be credited in the workers register with one day’s service for each day (including a day when the worker does not perform cleaning work) in each engagement period.

**Note—**

See section 37 in relation to service credits for days when no cleaning work is performed.

### 35 Limitations on crediting service

- (1) Except as provided by section 36, a worker must not be credited in the workers register with a day’s service unless the day is on or after the worker’s registration day.
- (2) A worker must not be credited in the workers register with more than 365 days of service in a financial year, even if a particular financial year has 366 days.
- (3) The days of service a worker must be credited for in the workers register 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 workers register and a further number of days of service in a like register or record kept under a corresponding law, and

(b) the total number of days is more than 365 days.

(4) The adjustment made 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 Corporation may decide.

### **36 Foundation worker service credit**

A registered worker whose name is entered on the workers register as a foundation worker is to be credited, on the day that the worker's name is entered in the register, with 365 days of recognised service for the purposes of this Act.

#### **Note—**

Days credited as recognised service are not counted as service for the purposes of the [Long Service Leave Act 1955](#).

### **37 Service credit for breaks in engagement periods**

(1) The Corporation may, on application by a registered worker, credit the worker with one day's service in the workers register for each day of any period not exceeding 3 months during which the Corporation is satisfied that, because of circumstances of a kind described by the regulations, the worker was not eligible to be credited with service under section 34.

(2) The application is to be in the approved form.

### **38 Service credit—insolvent employer**

(1) The Corporation may credit an employee who is registered as a worker with one day's service in the workers register for each day during which the person's employer is insolvent under administration, or a Chapter 5 body corporate, within the meaning of the [Corporations Act 2001](#) of the Commonwealth, on application by the worker or the administrator.

(2) The application is to be in the approved form.



## **Part 4 Returns and records**

### **Division 1 Returns**

#### **39 Returns by employers**

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

Maximum penalty—40 penalty units.

- (2) For each worker who is an employee of the person during the return period, the return must include the following—
  - (a) the total amount of ordinary remuneration paid by the employer to the worker during the period for cleaning work performed by the worker,
  - (b) if the worker's engagement with the person began during the period—the day on which the engagement period for the worker began,
  - (c) if the worker's engagement with the person ended during the period—the day on which the engagement period for the worker ended,
  - (d) any other information required by the regulations.

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

- (5) This section does not require a person to record any information in respect of a worker who is an employee of the person who—
  - (a) is not a registered worker, and
  - (b) was not recorded as a worker in the person's return for the previous return period, and
  - (c) performed work for the person for less than 5 days during the current return period.

#### **40 Exemption from lodging return**

- (1) An employer may apply to the Corporation for an exemption from the requirement to lodge a return under section 39 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 Corporation may grant the exemption if the Corporation is satisfied that—
  - (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 or a Territory about long service leave payments for persons performing cleaning work to that established by this Act in relation to the person.
- (4) The Corporation may, by notice in writing to the employer, revoke an exemption granted under subsection (3) if the Corporation is satisfied the exemption should no longer be given.
- (5) If the Corporation refuses to grant an application for, or revokes, an exemption, the Corporation must give the employer written notice of its decision.
- (6) The notice must include—
  - (a) an explanation for the decision, and
  - (b) a statement of the effect of section 81.

#### **41 Returns by contractors who are registered workers**

- (1) A contractor who is, or was, a registered worker during a return period must give the Corporation a return in the approved form containing the required information not later than 14 days after the end of the return period.

Maximum penalty—20 penalty units.

- (2) In this section—

**required information**, for a contractor for a return period, means—

- (a) the number of days, or part days, during the return period on which the contractor performed work, and
- (b) the contractor's total ordinary remuneration for the work during the return period, and
- (c) any other information prescribed by the regulations.

## **Division 2 Review of ordinary remuneration**

### **42 Review of ordinary remuneration by Corporation**

- (1) This section applies if the Corporation considers that the total ordinary remuneration for a worker stated in a return given to the Corporation under section 39 or 41 for a return period may be insufficient or excessive because of the nature of the work performed by the worker in the return period.
- (2) The Corporation must give the following people a notice advising them that they may make a submission in relation to the ordinary remuneration—
  - (a) for a return under section 39—the employer who gave the return and the employee,
  - (b) for a return under section 41—the contractor.
- (3) A submission must be made to the Corporation in writing within one month after the notice is given.
- (4) After considering a submission (if any) made in accordance with this section, the Corporation may—
  - (a) decide that the total ordinary remuneration stated in the return for the return period is reasonable, or
  - (b) fix another amount as the total ordinary remuneration of the worker for the return period.

### **43 Notice of Corporation's decision on review of remuneration**

- (1) The Corporation must, not later than 14 days after it makes a decision under section 42, give written notice of the decision to—
  - (a) for a decision relating to a return under section 39—the employer who gave the return and the employee, or
  - (b) for a decision relating to a return under section 41—the contractor.
- (2) If the decision is to fix another amount under section 42 (4) (b), the notice must include—
  - (a) the total ordinary remuneration fixed by the Corporation for the return period, and
  - (b) a statement of the effect of sections 44 and 45.

### **44 Effect of variation of ordinary remuneration**

- (1) The following provisions apply if the Corporation fixes an amount under section 42 (4)
  - (b) as the total ordinary remuneration of a worker for a return period (the **varied**

**amount**) other than the amount stated for that worker for that period by the worker's employer in a return under section 39 (the **returned amount**)—

- (a) if the varied amount is more than the returned amount, the employer must pay the Corporation the additional amount payable under section 48 (Determination of levy—employers) for the worker for that return period,
- (b) if the varied amount is less than the returned amount, the Corporation must—
  - (i) if asked by the employer to refund the overpayment of the levy payable under section 50—refund the overpayment, or
  - (ii) in any other case—credit the overpayment against future amounts payable under that section by the employer.

(2) The following provisions apply if the Corporation fixes an amount under section 42 (4)

(b) as the total ordinary remuneration of a contractor who is a registered worker for a return period (the **varied amount**) other than the amount stated for that period by the contractor in a return under section 41 (the **returned amount**)—

- (a) if the varied amount is more than the returned amount, the contractor must pay the Corporation the additional amount payable under section 49 (Determination of levy—contractors) for the contractor for that return period,
- (b) if the varied amount is less than the returned amount, the Corporation must—
  - (i) if asked by the contractor to refund the overpayment of the levy payable under section 51—refund the overpayment, or
  - (ii) in any other case—credit the overpayment against future amounts payable under that section by the contractor.

#### **45 Variation of ordinary remuneration**

An employer or contractor who is required by section 44 to pay an additional amount must pay the amount not later than—

- (a) one month after the day on which the person receives notice under section 43 of the Corporation's decision, or
- (b) the end of any additional time the Corporation allows.

Maximum penalty—20 penalty units.

### **Division 3 Records**

#### **46 Employers to keep records**

- (1) An employer for the contract cleaning industry must keep—

- (a) a written record showing the relevant particulars for each employee who performs cleaning work for the employer, and
- (b) a copy of the employment contract for each employee.

Maximum penalty—20 penalty units.

- (2) An employer must keep the written record for 7 years after the day the employee stops being employed by the employer.

Maximum penalty—20 penalty units.

- (3) In this section—

***relevant particulars*** means the following—

- (a) the employee's name and date of birth,
- (b) if the employee is a registered worker—the registration number of the worker,
- (c) the nature of the work carried out by the employee,
- (d) the employees's ordinary remuneration for each return period,
- (e) the number of days worked by the employee in each return period,
- (f) the date when the employee began service with the employer,
- (g) long service leave granted to the employee,
- (h) if the employee stops service with the employer—the date the employee stops service,
- (i) payment made instead of long service leave under section 63 (Entitlement to pro rata payment instead of leave in limited circumstances) to an employee who stops service.

#### **47 Registered contractors to keep records**

- (1) A contractor who is registered as a worker for the contract cleaning industry must keep a written record of the following—
  - (a) the contractor's name and date of birth,
  - (b) the nature of the work performed by the contractor,
  - (c) when and for whom work is performed,
  - (d) the contractor's ordinary remuneration for each return period,
  - (e) the number of days worked by the contractor in each return period.

Maximum penalty—20 penalty units.

- (2) The contractor must keep the written record for 7 years after the day the record is made.

Maximum penalty—20 penalty units.

#### **47A Power to require production of employee records**

- (1) An inspector may give a written notice to an employer or other person who the inspector reasonably believes has possession, custody or control of the employer's records requiring the employer or person to produce the employer's records specified in the notice at the time and place specified in the notice.
- (2) An inspector may—
  - (a) inspect a record produced in response to a notice under this section, and
  - (b) take copies of or extracts from, or make notes from, a record.
- (3) An employer does not contravene a provision of this Act if the employer is unable to comply with the provision because an inspector retained possession of a record or document under this section.

#### **47B Power to take possession of records to be used as evidence**

- (1) An inspector to whom a record is produced under this Part may take possession of the record if the inspector considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.
- (2) If an inspector takes possession of a record under this section, the record may be retained by the inspector until the completion of proceedings, including proceedings on appeal, in which the record may be evidence.
- (3) The person from whom the record was taken must be provided, within a reasonable time after the record is taken, with a copy of the record certified by an inspector as a true copy.
- (4) A copy of a record provided under this section is, as evidence, of equal validity to the record of which it is certified to be a copy.

## **Part 5 Long service leave levy**

### **48 Determination of levy—employers**

- (1) The amount of levy payable by each employer for the contract cleaning industry on the ordinary remuneration for each worker engaged by the employer to perform cleaning work is the percentage of the employee's ordinary remuneration determined by the Minister from time to time by order published on the NSW legislation website.

- (2) The Corporation must, from time to time, recommend in writing to the Minister the levy that should be payable by employers.
- (3) Before making an order, the Minister must have regard to any recommendation made under subsection (2), but need not follow it.
- (4) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the [Interpretation Act 1987](#) apply to an order under this section in the same way as those sections apply to statutory rules.

#### **49 Determination of levy—contractors**

- (1) The amount of levy payable by each contractor who is registered as a worker for the contract cleaning industry is the percentage of the contractor's ordinary remuneration determined by the Minister from time to time by order published on the NSW legislation website.
- (2) The Corporation must, from time to time, recommend in writing to the Minister the levy that should be payable by contractors who are registered workers for the contract cleaning industry.
- (3) Before making an order, the Minister must have regard to any recommendation made under subsection (2), but need not follow it.
- (4) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the [Interpretation Act 1987](#) apply to an order under this section in the same way as those sections apply to statutory rules.

#### **50 Levy payments by employers**

A person who is, or was, an employer for the contract cleaning industry during a return period must, when the person gives the Corporation a return under section 39, pay to the Corporation the levy payable under section 48 for the return period.

Maximum penalty—20 penalty units.

#### **51 Levy payments by registered contractors**

A person who is, or was, a contractor registered as a worker for the contract cleaning industry during a return period must, when the person gives the Corporation a return under section 41, pay to the Corporation the levy payable under section 49 for the return period.

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

- (1) A levy amount that is not paid at or before the time it is due bears compound interest at the prescribed rate.
- (2) Interest forms part of, and may be recovered as, unpaid levy.

- (3) The Corporation may, if it considers that special circumstances warrant it doing so in any particular case, direct—
  - (a) that the time for payment of all or part of a levy amount be changed to a later time specified in the direction, or
  - (b) that the amount of any interest payable under subsection (1) be waived or reduced by an amount specified in the direction.
- (4) Subsection (3) has effect despite sections 50 and 51.
- (5) In this section **prescribed rate** means—
  - (a) except as provided by paragraph (b)—2% per calendar month, or part of a calendar month, or
  - (b) such other rate as is prescribed by the regulations.

**Note—**

See section 82 with respect to appeals.

### **53 Assessment of unpaid levy**

- (1) If it appears to the Corporation that a levy amount has not been fully paid, the Corporation may make an assessment of the amount owing.
- (2) The Corporation must give a notice of the assessment to the person to whom the assessment relates.
- (3) The notice must include—
  - (a) an explanation for the decision, and
  - (b) a statement of the effect of section 83.

### **54 Authorised agents for collection of levies**

- (1) The Corporation may enter into agreements with agents appointed by it for the collection of long service levies.
- (2) Any such agreement may provide for the payment out of the Fund of remuneration for the authorised agent.

## **Part 6 Long service leave**

### **55 Long service leave**

A registered worker for the contract cleaning industry is entitled to leave in accordance with this Part.



## 56 Years of recognised service

A registered worker for the contract cleaning industry is taken to have completed a year of recognised service for each 365 days of recognised service.

## 57 Long service leave formula—contract cleaning industry

The following is the **long service leave formula** for the contract cleaning industry used under this Part for working out entitlements to long service leave—

$$0.8667 \times \frac{D}{365} \times R$$

where—

**RS** means the registered worker's number of days of recognised service to which the long service leave entitlement relates.

**W** means the number of weeks of long service leave held by the registered worker.

## 58 Amount of leave—contract cleaning industry

- (1) A registered worker for the contract cleaning industry who has 3650 days or more of recognised service completed after the commencement of this Act is entitled to 8.67 weeks of long service leave under this Act.

### Note—

Payment for leave under this Act is made by the Corporation—see section 60.

- (2) A registered worker for the contract cleaning industry who completes a further 1825 days of additional service after the worker last became entitled to long service leave under this Act—
  - (a) is entitled under this Act to 4.33 weeks of long service leave for the additional days of service if they are credited in the workers register, and
  - (b) to a further 4.33 weeks of long service leave under this Act for each subsequent further 1825 days of additional service that the worker completes and that is so credited.
- (3) A worker for the contract cleaning industry—
  - (a) who before the commencement of this Act had accrued an entitlement, or after the commencement becomes entitled, to long service leave under the [Long Service Leave Act 1955](#) (the **1955 Act**) but who has not accrued any entitlement to long service leave with any employer under this Act, and
  - (b) who after the commencement of this Act, becomes a registered worker and

completes a further 1825 days of additional service in the industry after last becoming entitled to long service leave under the 1955 Act,

is entitled under this Act to 4.33 weeks of long service leave for the additional days of service if the worker is credited with the additional days of service in the workers register and to a further 4.33 weeks of long service leave for each subsequent further 1825 days of additional service that the worker completes and that is so credited.

## **59 Grant of leave by employers—contract cleaning industry**

- (1) The employer of a registered worker for the contract cleaning industry is guilty of an offence if—
  - (a) the worker becomes entitled to long service leave under this Act, and
  - (b) the employer does not grant the worker the long service leave before the end of the prescribed period.

Maximum penalty—50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.

- (3) In this section—

***prescribed period***, for long service leave to which a registered worker engaged by an employer for the contract cleaning industry is entitled, means—

- (a) 6 months after the day on which the worker becomes entitled to the leave under this Act, or
  - (b) if the Corporation has allowed (on application by the employer or the worker) a period longer than 6 months—the period allowed by the Corporation, or
  - (c) if the employer and worker agree on a period longer than 6 months and less than 5 years—the period agreed.
- (4) If an employer and a worker agree on a prescribed period as referred to in paragraph (c) of the definition of ***prescribed period*** in subsection (3), the employer must give written notice to the Corporation of the agreed period within 7 days after the agreement is reached.

## **60 Payments for leave**

- (1) A registered worker who has accrued long service leave under this Act may apply to the Corporation for payment for the leave.
- (2) The application must be in the approved form.
- (3) The Corporation may require an applicant to provide such documentary or other

evidence (including a statutory declaration) as the Corporation may require to deal with the application.

- (4) If the Corporation is satisfied that the applicant is entitled to long service leave under this Act, the Corporation must approve the application and pay to the applicant the amount payable under section 66 or 67 (as the case requires) as soon as practicable after the application is made.

#### **61 Long service leave not payable if payment previously made**

- (1) A registered worker is not entitled to be paid for a day's service that is credited to the worker in the workers register if payment for the entitlement has already been made under this or another Act, or an award.

- (2) In this section—

**award** means an award, agreement or industrial instrument (under a law of the State or of the Commonwealth) providing for payment of workers performing cleaning work in the contract cleaning industry.

#### **62 Prohibition on payments in lieu of leave**

Except as provided by section 64, a registered worker must not be paid any amount instead of long service leave.

#### **63 Entitlement to pro rata payment instead of leave in limited circumstances**

- (1) This section applies to a registered worker for the contract cleaning industry who has 5 years of recognised service if—
  - (a) the worker has permanently left the industry, and
  - (b) 10 weeks, or a shorter period prescribed by the regulations, have passed since the day on which the worker permanently left the industry, and
  - (c) the worker has not been credited with service in the workers register for any of the days in the 10-week period or the shorter period prescribed under subsection (1)(b).
- (2) If the Corporation is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the number of weeks of long service leave worked out in accordance with the long service leave formula.

#### **64 Pro rata payments instead of leave**

- (1) If a registered worker is entitled to payment instead of long service leave under section 63, the worker may apply to the Corporation for the payment.
- (2) If a registered worker has died and, immediately before the death, the registered

worker had 5 years of recognised service, the registered worker's personal representative may apply to the Corporation for payment of the entitlement.

- (3) An application under this section must be in the approved form.
- (4) In this section, **personal representative**, in relation to a payment in respect of a person who has died, means—
  - (a) in the case of a person who died wholly or partially intestate—any person who appears to the Corporation to be entitled to obtain a grant of letters of administration of the estate of the person, and
  - (b) in the case of a person who died testate—any person who appears to the Corporation to be entitled to receive the relevant payment under the will of the person.

#### **65 How are leave entitlements to be worked out?**

- (1) For the purposes of sections 60 (Payments for leave) and 64 (Pro rata payments instead of leave), the amount payable to a registered worker for, or instead of, long service leave is—
  - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in section 66, and
  - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 67.
- (2) For the purposes of subsection (1)—
  - (a) long service leave must be taken in the reverse order in which it is accrued, and
  - (b) if pro rata payment instead of leave is being made—the payment is made in relation to the leave in the order in which it is accrued.

#### **66 Leave payments to employee for service as a registered worker**

- (1) For the purposes of section 60, the amount payable to an employee for long service leave for service accrued as a registered worker is the amount worked out using the following formula—

$$0.8667 \times \frac{D}{365} \times R$$

- (2) In this section—

**D** means the number of days of service credited to the registered worker in the workers register to which the amount payable relates.

**designated day** means—

- (a) if the registered worker is taking long service leave—the day the leave begins, and
- (b) if the registered worker is being paid pro rata instead of taking long service leave—the day the application for payment is approved.

**R** is the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker—

- (a) the most recent 2 quarters of service as a registered worker before the designated day,
- (b) the most recent 4 quarters of service as a registered worker before the designated day,
- (c) the most recent 20 quarters of service as a registered worker before the designated day,
- (d) if relevant—the most recent 40 quarters of service as a registered worker before the designated day.

**Example—“R”**

Henry has worked in the contract cleaning industry for 7 years. The periods in paragraphs (a), (b) and (c) apply to Henry because he has completed more than 20 return periods (ie 1825 days or 5 years), but less than 40 return periods (ie 3650 days or 10 years), of relevant service.

Henry's average weekly income for the 2 return periods before the designated day is \$283. His weekly averages for the 4 and 20 return periods before the designated day are \$427 and \$375, respectively. Accordingly “R” is \$427 because it is the highest of the weekly averages.

## **67 Leave payments to a contractor for service as a registered worker**

- (1) For the purposes of section 60, the amount payable to a contractor who is a registered worker for long service leave for service accrued as a registered worker is the total of the following for the service—
  - (a) amounts paid by the contractor to the Corporation under section 51 (Levy payments by registered contractors),
  - (b) interest at the determined rate worked out from the date of receipt of each amount paid under that section until the designated day for the leave.
- (2) The Corporation must determine an interim rate of interest from time to time before the determination of the rate under subsection (1) (b).
- (3) The determined rate of interest must—
  - (a) be worked out after the end of each financial year for the previous financial year,

- (b) take into account the expenses incurred in administering the Corporation,
- (c) be at least 75% of the rate of interest, expressed as a percentage, earned by the Corporation and worked out in accordance with the regulations.

(4) In this section—

**designated day** means—

- (a) if the worker is taking long service leave—the day the leave begins, and
- (b) if the registered worker is being paid pro rata instead of taking long service leave—the day the Corporation approves the application for payment.

#### **68 Deemed minimum and maximum rates of pay**

- (1) Despite section 66, the regulations may make provision for the determination of minimum and maximum amounts for **R** for the purposes of the formula in that section.
- (2) The Minister is to consult with the Committee before recommending the making of a regulation under this section.
- (3) The Committee is to advise and make recommendations to the Minister on the operation of, and any amendment to or repeal of, any regulation made under this section.
- (4) If an amount of a long service payment to a worker under section 66 or 67 is, because of the operation of a regulation made under this section, less than the amount it would have been in the absence of the regulation, the Corporation is to notify the worker in writing of that fact and give an explanation of the operation of the regulation.

**Note—**

See section 84 with respect to appeals.

#### **69 Public holidays not to count as leave**

A period of long service leave taken by a registered worker is increased by one day for each public holiday that falls during the period of leave.

#### **70 Corporation may pay if employer insolvent**

- (1) This section applies if—
  - (a) the employer of a registered worker is or becomes insolvent under administration, or a Chapter 5 body corporate, within the meaning of the [Corporations Act 2001](#) of the Commonwealth, and
  - (b) the worker has an entitlement to long service leave under this Act.

- (2) The Corporation 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 the worker's personal representative has received from or on behalf of the employer for the worker's long service leave entitlement under this Act.

#### **71 Payment may be deferred**

- (1) A person who applies for a payment for a long service leave entitlement may ask the Corporation to defer payment.
- (2) The Corporation may defer the payment for a period agreed between the person and the Corporation.

#### **72 Corporation's liability confined to long service leave**

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

- (a) an employer of the registered worker, or
- (b) a person in a contractual relationship with the registered worker.

### **Part 7 Appeals to Committee**

#### **Division 1 General**

##### **73 Appeals—general provisions**

- (1) An appeal under this Act is to be made—
  - (a) except as provided by paragraph (b)—within 21 days after the appellant is notified of the decision appealed against, or
  - (b) within such other time as may be prescribed by the regulations in respect of the appeal.
- (2) The manner of making and the procedure for hearing and determining an appeal under this Act is, subject to the regulations, to be as determined by the Committee.
- (3) The Committee may at any time refer the matter the subject of an appeal under this Act to the Corporation for reconsideration.
- (4) The determination of the Committee in respect of an appeal under this Act is taken to be the final decision of the Corporation and must be given effect to by the Corporation.

- (5) Despite subsection (4), in proceedings in any court a plea of issue estoppel is not available in respect of an issue decided by the Committee.

#### **74 Hearing and determination of appeals by 2 or more members**

- (1) If the Committee in any particular case or class of cases so determines, an appeal under this Act may be heard or may be heard and determined by 2 or more members of the Committee appointed by the Committee for the purpose.
- (2) If an appeal is heard but not determined by 2 or more members of the Committee, the determination of the appeal must be made by the Committee at a meeting at which a quorum is present.
- (3) If an appeal is heard and determined by 2 or more members of the Committee, the determination of the appeal is taken to have been made by the Committee.

#### **75 Notice of appeal decisions**

The Committee must give the appellant written notice of its decision on an appeal under this Act not later than 14 days after the day on which the decision is made.

#### **76 Personal representative of deceased person may appeal on person's behalf**

- (1) A reference in Division 2 to a person who has an appeal right under that Division includes, where the person has died, the person's personal representative acting on behalf of the person.
- (2) In this section, **personal representative**, in relation to a person who has died, means—
  - (a) in the case of a person who died wholly or partially intestate—any person who appears to the Committee to be entitled to obtain a grant of letters of administration of the estate of the person, and
  - (b) in the case of a person who died testate—any person who appears to the Committee to be entitled to receive the relevant payment under the will of the person.

### **Division 2 Rights of appeal**

#### **77 Appeals against refusal to register as employer**

- (1) This section applies if the Corporation refuses to register a person as an employer under section 18 (Dealing with applications for registration as employer).
- (2) The applicant for registration may appeal to the Committee against the Corporation's decision.
- (3) If an appeal is made, the Committee must—



(a) if satisfied that the person to whom the application relates is an employer for the contract cleaning industry—direct the Corporation to register the person as an employer for the industry, or

(b) in any other case—confirm the Corporation’s decision.

#### **78 Appeals against refusal to register as registered worker**

(1) This section applies if the Corporation refuses to register a person as a worker under section 24 (Dealing with applications for registration as registered worker).

(2) The applicant for registration may appeal to the Committee against the Corporation’s decision.

(3) If an appeal is made, the Committee must—

(a) if satisfied that the person to whom the application relates is a worker for the contract cleaning industry—direct the Corporation to register the person as a worker for the industry, or

(b) in any other case—confirm the Corporation’s decision.

#### **79 Appeal against cancellation of employer’s registration**

(1) A person may appeal to the Committee against a decision of the Corporation under section 31 to cancel the person’s registration as an employer.

(2) The Committee may, in determining an appeal, confirm the cancellation or—

(a) in the case of a cancellation under section 31 (1)—quash the decision of the Corporation if satisfied that the person concerned is an employer and that the person’s application to become a registered employer was approved in accordance with this Act, or

(b) in the case of a cancellation under section 31 (4)—quash the decision of the Corporation if satisfied that the person concerned has not stopped engaging workers to perform cleaning work in the contract cleaning industry.

#### **80 Appeal against cancellation of worker’s registration**

(1) A person may appeal to the Committee against a decision of the Corporation under section 28 to cancel the person’s registration as a worker (otherwise than as authorised by section 28 (4)).

(2) The Committee may, in determining an appeal, confirm the cancellation or—

(a) in the case of a cancellation under section 28 (1)—quash the decision of the Corporation if satisfied that the person concerned is a worker and that the person’s application to become a registered worker was approved in accordance

with this Act, or

- (b) in the case of a cancellation under section 28 (2)—quash the decision of the Corporation if satisfied that the registered worker was entitled under this Act to be credited with service in the workers register during the period of 4 years immediately preceding the cancellation.

### **81 Appeals against refusal to grant exemption or revocation of exemption**

- (1) This section applies if the Corporation refuses to grant an exemption to an employer, or revokes an exemption granted to an employer, under section 40 (Exemption from lodging return).
- (2) The employer may appeal to the Committee against the Corporation's decision.
- (3) If an appeal is made, the Committee must—
  - (a) if satisfied that the exemption should be granted or should not have been revoked—direct the Corporation to grant or reinstate the exemption (as the case requires), or
  - (b) in any other case—confirm the Corporation's decision.

### **82 Appeal in relation to payment of interest on long service levies etc**

- (1) This section applies if the Corporation gives, or refuses to give, a direction under section 52 (3).
- (2) A person who is aggrieved by the Corporation's decision may appeal to the Committee for a review of the matter.
- (3) Without affecting the generality of section 73, notice of appeal under subsection (2) must—
  - (a) specify why the decision of the Corporation with respect to the direction or the refusal to give the direction is unreasonable, having regard to the circumstances notified to the Corporation at the time the decision was made, and
  - (b) be accompanied by a statutory declaration verifying the particulars set out in the application.
- (4) If an appeal is made, the Committee must—
  - (a) confirm the decision of the Corporation, or
  - (b) if it considers that the decision of the Corporation is unreasonable having regard to the circumstances notified to the Corporation at the time the decision was made—give such directions to the Corporation with respect to the matter as the Committee considers appropriate.

### **83 Appeals against levy assessments**

- (1) A person who is aggrieved by a decision of the Corporation in connection with an assessment under section 53 may appeal to the Committee for a review of the matter.
- (2) The Committee may, in determining an appeal, confirm the decision of the Corporation or quash the decision of the Corporation.

### **84 Appeal against limitation of long service payment by operation of deemed minimum and maximum rates of pay**

- (1) A person who has received a notification under section 68 and is dissatisfied with the calculation of the long service payment may appeal to the Committee.
- (2) The Committee, in determining the appeal, may confirm the calculation of the long service payment or set it aside and make a new calculation in substitution for that calculation.

## **Part 8 Enforcement**

### **Division 1 Authorisation and identification of inspectors**

#### **85 Definition**

In this Part—

***inspector*** means a person authorised by the Corporation for the purposes of this Part.

#### **86 Authorisation of inspectors**

- (1) The Corporation may authorise any person, or persons included in a class of persons, to be an inspector or inspectors for the purposes of this Part.
- (2) The Corporation may, in and by the instrument authorising a person to be an inspector, limit the functions that the inspector may exercise under this Part.
- (3) An inspector is, to the extent to which the inspector is exercising functions as an inspector under this Part, subject to the control and direction of the Corporation.

#### **87 Identification of inspectors**

- (1) The Corporation is to cause each inspector to be issued with a means of identification in the form approved by the Corporation.
- (2) In the course of exercising the functions of an inspector under this Part, the inspector must, if requested to do so by any person affected by the exercise of any such function, produce the inspector's identification for inspection by the person unless to do so would defeat the purpose for which the functions are to be exercised.

## Division 2 Powers of entry and inspection

### 88 Power to enter premises

- (1) An inspector may enter any premises at any time for the following purposes—
  - (a) determining whether any workers in the contract cleaning industry are employed or engaged there,
  - (b) determining whether there has been compliance with, or a contravention of, this Act or the regulations.
- (2) Entry may be effected under this Act by an inspector with such assistance as the inspector considers necessary and with the use of reasonable force.

### 89 Entry into residential premises only with permission or warrant

This Division does not empower an inspector to enter any part of premises used only for residential purposes without the permission of the occupier or under the authority of a search warrant under section 90.

### 90 Search warrants

- (1) An inspector may apply to an authorised officer for the issue of a search warrant if the inspector believes on reasonable grounds that—
  - (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
  - (b) there is in or on any premises any matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant—
  - (a) to enter the premises, and
  - (b) to exercise any function of an inspector under this Division.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) In this section—

**authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**matter or a thing** connected with an offence means—

- (a) any matter or a thing with respect to which the offence has been committed, or
- (b) any matter or a thing that will afford evidence of the commission of an offence, or
- (c) any matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

**offence** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

## 91 Powers to inspect and seize things

- (1) An inspector may, on any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An inspector may do any or all of the following—
  - (a) carry out surveillance activities,
  - (b) examine and inspect any part of the premises or any article or thing on the premises,
  - (c) make such examinations and inquiries as the inspector considers necessary,
  - (d) require records and other documents required to be kept for the purposes of this Act or the regulations to be produced for inspection,
  - (e) examine and inspect any such records or other documents,
  - (f) take copies of any such records or other documents,
  - (g) seize anything that the inspector has reasonable grounds for believing is connected with an offence under this Act or the regulations,
  - (h) do any other thing the inspector is empowered to do under this Part.
- (3) The power conferred on a person authorised under subsection (2) to require the production of a document includes the power—
  - (a) to require its translation into the English language, if it is not written in English, and
  - (b) to require the production, in hard-copy, or graphic form, of a document that is stored electronically or that otherwise consists of anything referred to in paragraph (b) or (c) of the definition of **document** in the [Interpretation Act 1987](#).
- (4) The power to seize anything connected with an offence includes a power to seize—
  - (a) a thing with respect to which the offence has been committed, and

- (b) a thing that will afford evidence of the commission of the offence, and
- (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

- (5) A person may be required to furnish a document under this Division only if the document is in the person's possession or is within the person's power to obtain lawfully.

## **92 Dealing with seized things**

- (1) If an inspector seizes anything under section 91 on any premises, the inspector must issue the person apparently in charge of the premises with a written receipt for the thing seized.
- (2) An inspector may retain anything seized under section 91 until the completion of any proceedings (including proceedings on appeal) in which it may be evidence.
- (3) A record may be retained under subsection (2) only if the person from whom the record was seized is provided, within a reasonable time after the seizure, with a copy of the record certified by the inspector as a true copy.
- (4) Subsection (2) ceases to have effect in relation to anything seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are commenced so orders.

## **93 Assistance to be given to inspectors**

- (1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Division in connection with any premises.
- (2) The inspector may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

## **94 Provisions relating to requirements to furnish records, information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to furnish any records or information or to answer a question on the ground that

the record, information or answer might incriminate the person or make the person liable to a penalty.

- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if—
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground—
- (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (6) **Requirement to state name and address** This section extends to a requirement under this Part to state a person's name and address.

## **95 Offences under this Part**

- (1) A person must not, without lawful excuse, refuse or fail to comply with a requirement made of the person under this Part.
- (2) A person must not wilfully—
  - (a) obstruct, delay or hinder an inspector in the exercise of the inspector's powers under this Part, or
  - (b) refuse to allow an inspector to enter any premises the inspector may lawfully enter under this Part.

Maximum penalty—50 penalty units.

## **Division 3 Other enforcement matters**

### **96 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by—
  - (a) in the case of a natural person—
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate—
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### **97 Authentication of certain documents by Corporation**

Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by the Secretary.

### **98 Corporation may require applicant under section 17 to provide further information or evidence**

- (1) The Corporation may, by written notice, require an applicant under section 17 to provide, within a reasonable period stated in the notice—
  - (a) such information further to the information contained in the application, and
  - (b) such documentary or other evidence (including a statutory declaration),as the Corporation may require to enable it to deal with the application.
- (2) The applicant is guilty of an offence if the applicant, without reasonable excuse, fails



to provide the information or evidence within the period stated in the notice.

Maximum penalty—40 penalty units.

**99 Corporation may require applicant under section 22 or 23 to provide further information or evidence**

- (1) The Corporation may, by notice in writing, require an applicant under section 22 (Application for registration by workers) or 23 (Application by employers for registration of employee) to provide within a reasonable period stated in the notice—
  - (a) such information further to the information contained in the application, and
  - (b) such documentary or other evidence (including a statutory declaration),as the Corporation may require to enable it to deal with the application.
- (2) The Corporation may refuse to grant the application if the applicant, without reasonable excuse, fails to provide the information or evidence in the period stated in the notice.

**100 Notice requiring information or documents**

- (1) This section applies if the Corporation believes a person is, or was an employer for the contract cleaning industry, but is not a registered employer.
- (2) The Corporation may, by written notice given to the person, require the person to give the Corporation the information or documents stated in the notice that are necessary to enable the Corporation to decide whether the person is, or was, an employer in the contract cleaning industry.
- (3) The notice may state a period, that must be reasonable in the circumstances, within which the information or documents must be given to the Corporation.
- (4) The person is guilty of an offence if the person, without reasonable excuse, fails to provide the information or documents within the period stated in the notice.

Maximum penalty—40 penalty units.

**101 False statements**

A person who—

- (a) in any application, certificate, claim, appeal, return or record made, furnished or maintained under or for the purposes of this Act or the regulations, or
- (b) in any information given—
  - (i) in purported compliance with a requirement made of the person under this Act or the regulations, or

- (ii) for the purpose of obtaining any exemption, concession, benefit or advantage under this Act or the regulations,

makes any statement or records any matter that the person knows to be false or misleading in a material particular is guilty of an offence.

Maximum penalty—50 penalty units.

## **102 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Corporation) unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act (or any such other Act), or
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or
- (e) with other lawful excuse.

Maximum penalty—50 penalty units.

## **Division 4 Proceedings for offences and debt recovery**

### **103 Nature of proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.
- (2) The provisions of the [Industrial Relations Act 1996](#) relating to appeals from, and the stating of a case by, the Local Court to the Supreme Court apply to proceedings before the Local Court for offences against this Act or the regulations.
- (3) Despite anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 6 years after the act or omission alleged to constitute the offence.

### **103A Penalty notices**

- (1) An inspector may issue a penalty notice to a person if it appears to the inspector that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

#### **104 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

#### **105 Recovery of charges etc by Corporation**

Any charge, fee, levy or money due to the Corporation under this Act may be recovered by the Corporation as a debt in a court of competent jurisdiction.

#### **106 Orders to make levy payments**

- (1) If the Local Court convicts a person, or finds the person guilty, of an offence against section 17 (Application for registration by employers), the Local Court may, in addition to imposing a penalty on the person, order the person to pay the Corporation the amount that would have been payable by the person under section 50 (Levy payments by employers) if the person had complied with this Act since becoming registered as an employer.
- (2) A person who contravenes an order under subsection (1) commits an offence.
- Maximum penalty—
- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for one year (or both).

### **107 Certificate as to payment of levies**

A certificate purporting to be signed by the Secretary or a person holding, or acting in, a prescribed office or position and certifying—

- (a) that, on a date specified in the certificate, an amount of levy, so specified, was paid to the Corporation or an authorised agent of the Corporation, or
- (b) that, during a period so specified, an amount of levy was not so paid, or
- (c) that no amount of levy was payable,

is admissible in evidence in any proceedings and is evidence of the matters stated in it.

## **Part 9 Relationship to other laws**

### **108 Definition**

In this Part—

**relevant law** means the following—

- (a) the [Long Service Leave Act 1955](#),
- (b) a corresponding law,
- (c) a law prescribed by the regulations for employment in the contract cleaning industry.

### **109 Benefits under other laws—election**

- (1) A registered worker must elect the law under which long service leave benefits are to be taken if the worker is eligible both for long service benefits under this Act and to long service benefits accrued after the commencement of this Act under a relevant law.
- (2) If a registered worker makes an election under subsection (1), the worker must give the Corporation notice in writing of the nature of the election and the engagement period for which the election is made.
- (3) If a registered worker elects to take long service benefits under a relevant law, the Corporation must remove from the relevant workers register the workers's credits for the engagement period.
- (4) However, the Corporation must keep a record of the removed credits.

### **110 Benefits under other laws—reimbursement of employer**

- (1) This section applies if—
  - (a) a registered worker has made an election under section 109, and

- (b) an employer pays the registered worker an amount under a relevant law.
- (2) The employer may apply to the Corporation for reimbursement of an amount paid under the relevant law, less any levy or other amount outstanding that is payable by the employer to the Corporation under this Act, if—
  - (a) an application is made to the Corporation, and
  - (b) the Corporation is satisfied that the amount paid by the employer was properly paid by the employer under the relevant law.
- (3) The application is to be made in the approved form.

#### **111 Reimbursement for certain payments under [Long Service Leave Act 1955](#)**

- (1) This section applies if an employee in the contract cleaning industry has an entitlement to long service leave with an employer that was accrued under the [Long Service Leave Act 1955](#) but has not accrued any entitlement with any employer under this Act.
- (2) The employer may apply to the Corporation for reimbursement of so much of the amount of long service leave as is payable to the employee for any part of the entitlement to long service leave accrued under the [Long Service Leave Act 1955](#) during an engagement period in which the employee was a registered worker under this Act.
- (3) The Corporation must pay the employer the amount if satisfied the amount paid by the employer was properly paid by the employer under the [Long Service Leave Act 1955](#).
- (4) If the Corporation makes a payment under subsection (3), the Corporation must remove from the workers register the workers's credits for the engagement period concerned.

### **Part 10 Reciprocal arrangements**

#### **112 Reciprocal agreements for corresponding laws**

- (1) The Minister administering this Act may enter into an agreement (a **reciprocal agreement**) with the Minister of another State or a Territory who administers a corresponding law in relation to payment of long service leave to people carrying out work in the contract cleaning industry.
- (2) Without limiting subsection (1), the agreement may make provision in relation to the following—
  - (a) payments for, or instead of, long service leave,

- (b) the exchange of information about service credits and entitlements to long service benefits between the Corporation and the reciprocal authority under the corresponding law,
- (c) anything else in relation to long service benefits that the Minister administering this Act considers appropriate.

### **113 Payment by Corporation on reciprocal authority's behalf**

- (1) This section applies to a registered worker who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the Corporation for payment of a long service leave entitlement worked out in accordance with the corresponding law.
- (3) The application must be in the approved form.
- (4) The Corporation must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the Corporation is authorised by the reciprocal authority to make the payment.

### **114 Payments by reciprocal authority on Corporation's behalf**

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the contract cleaning industry.
- (2) If the Corporation is notified about the payment and is satisfied that the payment was properly made, the Corporation must reimburse the reciprocal authority the amount worked out using the following formula—

$$0.8667 \times \frac{D}{365} \times R$$

- (3) If the Corporation makes a reimbursement under subsection (2), the obligation of the Corporation to make the payment to the person for the entitlement is discharged.
- (4) In this section—

**D** means the number of days of service credited to the registered person in the workers register to which the payment relates.

**R** is the amount decided by the reciprocal authority as the weekly amount payable to the person for the service credited to the person in this State.

### **114A Exchange of information**

- (1) The Secretary may enter into an arrangement (an **information sharing**

**arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Secretary or the agency.

- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of—
  - (a) the Secretary under this Act or the regulations, or
  - (b) the relevant agency.
- (3) Under an information sharing arrangement, the Secretary and the relevant agency are authorised—
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose the information to the other party.
- (4) In this section—

**long service agency** means an agency of the State, the Commonwealth, or another State or Territory, that exercises functions under legislation with respect to long service schemes, or employers or employees in relation to long service leave.

**relevant agency** includes the following—

- (a) a long service agency,
- (b) another agency of the State, the Commonwealth, or another State or Territory,
- (c) a local council,
- (d) a person or body that exercises functions, in the public interest, to protect the interests of long service schemes, employers or employees,
- (e) a person or body prescribed by the regulations.

## Part 11 Miscellaneous

### 115 Personal liability

A matter or thing done or omitted to be done by the Minister, the Corporation, the Committee or a member of the Committee, the Secretary, or a person acting under the direction of the Minister, the Corporation, the Committee or the Secretary does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member of the Committee, the Secretary, or the person so acting personally, to any action, liability, claim or demand.

## 116 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may be made with respect to fees (if any) payable under this Act and the waiver and refund of such fees.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

## 117 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
- (4) In addition, the Industrial Relations Advisory Council is to review the operation of this Act as soon as practicable after 1 July 2012 to assess the viability of extending the operation of the portable long service leave scheme under this Act that applies to workers in the contract cleaning industry to all workers in NSW (and in particular to workers in the social and community services industry, the security industry and other industry in which workers are generally engaged for short periods).
- (5) A report of the outcome of the review under subsection (4) is to be provided to the Minister within 12 months after 1 July 2012.

## 118 (Repealed)

## Schedule 1 Constitution and procedure of Committee

(Section 9 (5))

### Part 1 General

#### 1 Definitions

In this Schedule—

***appointed member*** means a member other than the Chairperson.

***Chairperson*** means the Chairperson of the Committee.



**member** means any member of the Committee.

## **Part 2 Constitution**

### **2 Terms of office of members**

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Part-time appointments**

Appointed members hold office as part-time members.

### **4 Reimbursement of nominating body**

The body that nominated an appointed member is entitled to be reimbursed such amount as the Minister may from time to time determine for time expended by the appointed member in carrying out the functions of a member.

### **5 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and may revoke any such appointment.
- (2) A deputy of an appointed member is to be appointed on the nomination of the same body as the body that nominated the appointed member for membership of the Committee.
- (3) In the absence of an appointed member, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of an appointed member, a person has all the functions of the member and is taken to be a member.
- (5) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence of the member.

### **6 Vacancy in office of member**

- (1) The office of an appointed member becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or

- (e) is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

#### **7 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

#### **8 Disclosure of pecuniary interests**

(1) If—

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure by a member at a meeting of the Committee that the member—

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Committee otherwise determines—
  - (a) be present during any deliberation of the Committee with respect to the matter, or
  - (b) take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Committee for the purpose of making the determination, or
  - (b) take part in the making by the Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Committee.
- (7) This clause applies to a member of a subcommittee of the Committee and the subcommittee in the same way as it applies to a member of the Committee and the Committee.

## **9 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member.
- (2) If by or under any Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Part 3 Procedure**

### **10 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of

business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.

## **11 Quorum**

The quorum for a meeting of the Committee is a majority of its members for the time being.

## **12 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

## **14 Transaction of business outside meetings or by telephone**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **15 First meeting**

The Minister may call the first meeting of the Committee in such manner as the Minister thinks fit.

## **Schedule 2 Savings, transitional and other provisions**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **2 Transitional arrangements affecting other laws**

Regulations under clause 1 may have effect despite any provision of Part 9 (Relationship to other laws).

## **Schedule 3 (Repealed)**