

Serial 272

Construction Industry Long Service Leave and Benefits Bill 2004

Mr Stirling

**A BILL
for
AN ACT**

to provide for long service leave and long service benefits for construction
workers, and for related purposes



NORTHERN TERRITORY OF AUSTRALIA
CONSTRUCTION INDUSTRY LONG SERVICE LEAVE AND BENEFITS
ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to provide for long service leave and long service benefits for construction workers, and for related purposes

[Assented to 2004]

[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – INTRODUCTION

Division 1 – Preliminary

1. Short title

This Act may be cited as the *Construction Industry Long Service Leave and Benefits Act 2004*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Object of Act

The object of this Act is to provide for the entitlements to long service leave and long service benefits for construction workers through a scheme that –

- (a) recognises the particular circumstances of the construction industry and construction workers in the Territory;
- (b) allows, through intergovernmental agreements –
 - (i) credits accrued under the scheme to be recognised by a similar scheme of a State; and
 - (ii) credits that were accrued under such a similar scheme to be recognised by the scheme; and
- (c) is funded primarily by a levy on construction work carried out in the Territory.

4. Entitlement under Act

This Act does not permit a person to claim, for the same period during which the person is employed or engaged to carry out construction work, both –

- (a) an entitlement under this Act to long service leave or a long service benefit; and
- (b) a similar entitlement under another law (including an award or an agreement under that law).

5. Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Division 2 – Interpretation

6. Definitions

In this Act, unless the contrary intention appears –

"annual certificate" means an annual certificate given by the Registrar under section 14 or 31;

"approved form" means a form approved by the Registrar under section 79;

"Board" means the Board established by section 53;

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"Board member" means a member of the Board appointed under section 54;

"Chairperson" means the Chairperson of the Board appointed under section 54;

"Construction Employers Register" means the Register established by section 25;

"construction work" has the meaning in section 7;

"construction worker" means a natural person who carries out construction work either as an employee or as a contractor;

"Construction Workers Register" means the Register established by section 9;

"contractor" means a person who carries out work for a fee or reward on the person's own account;

"contractor pay rate" means a contractor pay rate worked out in accordance with the Determinations made for section 20(6)(b);

"cost", of construction work, has the meaning in section 37;

"day of service" has the meaning in section 15(3);

"Determinations" means the determinations made by the Board under section 57;

"employee" means a natural person who carries out work under a contract of service or apprenticeship;

"employee pay rate" means an employee pay rate worked out in accordance with the Determinations made for section 19(4)(b);

"employer" means a person who employs an employee under a contract of service or apprenticeship;

"identity card" means an identity card for the Registrar or a delegate of the Registrar under section 82;

"levy" means the long service levy imposed by section 32;

"levy rate" means the percentage prescribed by the Regulations for section 33;

"local government council" means a municipal council or community government council constituted under the *Local Government Act*;

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"long service benefit" means –

- (a) a payment by the Board under section 19 to a registered employee;
- (b) a payment by the Board under section 20 to a registered contractor;
- (c) a payment by the Board under section 21 in relation to a deregistered person; or
- (d) a payment by the Board under section 22 to a registered worker who has ceased to carry out construction work;

"LSL credits", for a registered worker, has the meaning in section 16(2);

"personal representative" includes the Public Trustee under the *Public Trustee Act*;

"previous service" –

- (a) in relation to a reciprocal scheme – has the meaning in section 87; and
- (b) in relation to a transitional employee within the meaning of section 94(1) – has the meaning in section 94(1);

"public holiday" has the same meaning as in the *Public Holidays Act*;

"qualifying service" has the meaning in section 15;

"reciprocal agreement" means an agreement declared by the Minister to be a reciprocal agreement under section 86(3);

"reciprocal authority", in relation to a reciprocal agreement, means the person or body mentioned in section 86(2)(a);

"reciprocal scheme" in relation to a reciprocal agreement, means the scheme mentioned in section 86(1)(a);

"registered contractor" means a person who is registered as a contractor under section 11 (whether or not the person is also registered as an employee under that section);

"registered employee" means a person who is registered as an employee under section 11 (whether or not the person is also registered as a contractor under that section);

"registered employer" means a person who is registered as an employer under section 26;

"registered worker" has the meaning in section 9(3);

"Registrar" means the Registrar appointed under section 76;

"Scheme" has the meaning in section 8;

"site", in relation to construction work, means a site in the Territory (whether on land or off-shore) at which the construction work is to be or is being carried out;

"State" means a State or another Territory of the Commonwealth.

7. Construction work

Except as the Regulations otherwise provide, construction work has the same meaning as in the *Construction Contracts (Security of Payments) Act*.

8. Scheme

For this Act, the Scheme consists of the provisions that –

- (a) are in this Act, the Regulations, the Determinations or any arrangements arising from this Act; and
- (b) relate to the following:
 - (i) the registration of construction workers and employers of construction workers;
 - (ii) the entitlements to long service leave and long service benefits for registered workers;
 - (iii) the obligations of registered workers and registered employers;
 - (iv) the recognition of previous service for registered workers;
 - (v) the imposition, assessment and collection of the levy.

PART 2 – REGISTERED WORKERS

Division 1 – Registration of workers

9. Construction Workers Register

- (1) There is to be a Construction Workers Register.

(2) The Registrar must include in the Register the following information:

- (a) the name of each registered worker;
 - (b) each registered worker's qualifying service and LSL credits;
 - (c) any other information about each registered worker as is required by the Determinations.
- (3) For this Act, a registered worker is a person who –
- (a) is registered as an employee (whether or not the person is also registered as a contractor); or
 - (b) is registered as a contractor (whether or not the person is also registered as an employee).

10. Application for registration

- (1) A person may apply to be registered as an employee if –
- (a) the person is employed to carry out construction work in the Territory;
 - (b) either –
 - (i) the person's work description or classification is covered by clause 1.8, 5.1 or 5.11 of the Building and Construction Industry (Northern Territory) Award 2002 (as in force from time to time); or
 - (ii) the nature of the work (including the circumstance in which the work is carried out) is specified in the Determinations;
 - (c) the work is not –
 - (i) to be carried out by the person in a managerial, clerical, administrative or professional capacity (for example, as an architect or engineer); or
 - (ii) otherwise excluded by the Determinations; and
 - (d) the person is not employed to carry out the work –
 - (i) by the Territory, a local government council or a statutory corporation;

- (ii) by the Commonwealth, a State or a body corporate established for a public purpose by a law of the Commonwealth or of a State; or
 - (iii) by any other person or body, or in any other circumstance, that is specified in the Determinations.
- (2) A person may apply to be registered as a contractor if –
 - (a) the person is a natural person who is engaged as a contractor to carry out construction work in the Territory;
 - (b) subsection (1)(b) and (c) applies in relation to the person;
 - (c) the person is not engaged to carry out the work in the capacity of a contractor who –
 - (i) supplies materials for construction work; or
 - (ii) provides services while supplying such materials; and
 - (d) the person is not engaged to carry out the work by any of the entities mentioned in subsection (1)(d)(i), (ii) or (iii) or in any other circumstance that is specified in the Determinations.
- (3) A registered employer may apply for a person to be registered as an employee if –
 - (a) the employer employs the person to carry out construction work (whether in the Territory or elsewhere); and
 - (b) subsection (1)(b), (c) and (d) applies in relation to the person.
- (4) An application under subsection (1), (2) or (3) must be made to the Registrar in an approved form.

11. Registration

- (1) The Registrar must register a person as an employee or as a contractor (as the case may be) if –
 - (a) an application for the registration is made under section 10(1), (2) or (3); and
 - (b) the Registrar is satisfied that the applicant is entitled to make the application.
- (2) The registration takes effect from the time when the registration is recorded in the Construction Workers Register.

(3) This section does not prevent the Registrar from registering a person both as an employee and as a contractor where the person carries out construction work –

- (a) as an employee during a period of time; and
- (b) as a contractor during another period of time.

(4) To avoid doubt, the registration of a person under a reciprocal scheme does not prevent the person from being registered under this section.

12. Refusal to register

(1) The Registrar must refuse an application made under section 10(1), (2) or (3) if the Registrar is not satisfied that the applicant is entitled to make the application.

(2) If the Registrar decides to refuse the application, the Registrar must give the applicant a notice, stating –

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that the applicant is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.

13. Deregistration

(1) The Registrar must deregister a person as a registered worker if any of the following occurs:

- (a) for a continuous period of 4 years, the person has not been credited with any qualifying service;
- (b) the person applies to the Registrar in an approved form for the deregistration on the basis that the person no longer carries out construction work;
- (c) the person applies to the Registrar in an approved form for the deregistration on the basis that the person has retired from the workforce;
- (d) the Registrar is satisfied that the person has died.

(2) The person ceases to be a registered worker from the time when the deregistration is recorded in the Construction Workers Register.

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- (3) The Registrar must give notice of the deregistration –
 - (a) by sending it to –
 - (i) the last known address of the person; or
 - (ii) the address of the person's personal representative if the person has died; or
 - (b) by any other means that the Registrar considers reasonable and practicable in the circumstances.
- (4) If the Registrar decides to deregister a person because of subsection (1)(a), the Registrar must also state in the notice –
 - (a) the reasons for the decision; and
 - (b) that the person is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.
- (5) Except as provided by section 21 –
 - (a) this section does not prevent a deregistered person from being registered again; and
 - (b) any LSL credit or qualifying service credited to the person before the deregistration ceases to have effect from the time of the deregistration.
- (6) The Registrar must not deregister a person as a registered worker except in accordance with this section.

14. Annual certificate

- (1) The Registrar must, as soon as practicable after the end of each financial year, give each registered worker a certificate stating –
 - (a) the worker's qualifying service as at the end of that year;
 - (b) the worker's LSL credits as at the end of that year;
 - (c) that the worker is entitled to apply for a reconsideration or review under Part 5, Division 4 in relation to –
 - (i) the information in the certificate; or
 - (ii) the information in the Construction Workers Register that relates to the worker; and
 - (d) any other matters as are required by the Determinations.

(2) The certificate must be prepared on the basis of the information included in the Construction Workers Register.

(3) The Registrar may correct any errors in the certificate by issuing a revised certificate to the worker at a later time.

Division 2 – Long service leave entitlements

15. Qualifying service

(1) The Registrar must credit each registered worker with an amount of qualifying service for a financial year that is equal to the total number of the worker's days of service for that year.

(2) However, the Registrar must not credit the worker with more than 260 days of qualifying service for a financial year.

(3) Subject to the Determinations, each of the following is a day of service for the worker:

- (a) a workday throughout which the worker carries out construction work in the Territory;
- (b) a public holiday or a day of paid absence for the worker (other than a day that is part of long service leave granted to the worker) while the worker is employed or engaged to carry out construction work in the Territory;
- (c) a day of service worked out in accordance with the Determinations in relation to a time when the worker is employed or engaged to carry out construction work in the Territory (for example, for construction work carried out, or paid absence, for part of a day).

(4) Except as provided by section 101, in crediting the worker with qualifying service, the Registrar must take into account the worker's days of service in relation to the following periods:

- (a) the period of 12 months immediately before the worker becomes a registered worker;
- (b) a period during which the worker is a registered worker.

16. LSL credits

(1) The Registrar must credit each registered worker with a long service leave credit ("LSL credit") of 6.5 days for each qualifying service of 260 days that has been credited to the worker.

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(2) A registered worker's LSL credits at any time is the sum of the following that remains credited to the worker at that time:

- (a) the worker's LSL credits under subsection (1);
- (b) any LSL credit converted from the worker's previous service under section 87, 95 or 96.

Example for section 16 –

A registered worker who has 260 days of qualifying service for each year of a 10-year period will therefore be entitled to 65 days of LSL credits at the end of that period.

17. Credits for person registered both as employee and contractor

To avoid doubt, if a registered worker is registered both as an employee and as a contractor –

- (a) the worker must not be credited with any qualifying service in relation to the same day of service more than once;
- (b) subject to sections 87, 95 and 96 – the worker's LSL credits must be based on the total amount of the worker's qualifying service; and
- (c) an entitlement to long service leave or a long service benefit for the worker must be based on the total amount of the worker's LSL credits.

Example for section 17 –

A registered worker who is an employee when applying for a long service benefit can therefore utilise all the LSL credits credited to the worker, including LSL credits for work carried out by the worker as a contractor.

18. Registered employee's entitlement to long service leave

(1) A registered employee who is employed by a registered employer has an entitlement to be granted long service leave if any of the following occurs:

- (a) the employee has been credited with a total of 65 days of LSL credits for the first time;
- (b) the employee has been credited with a total of 32.5 days of additional LSL credits after the employee was credited with the 65 days of LSL credits mentioned in paragraph (a);
- (c) whenever the employee has again been credited with a total of 32.5 days of additional LSL credits after the employee was credited with the 32.5 days of LSL credits mentioned in paragraph (b).

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(2) The entitlement is for the employee to be granted an amount of long service leave not exceeding –

- (a) if subsection (1)(a) applies – 65 days; or
- (b) if subsection (1)(b) or (c) applies – 32.5 days.

(3) If the employee has an entitlement under subsection (1), the employee may apply to the employer for an amount of long service leave not exceeding –

- (a) the amount mentioned in subsection (2)(a) or (b) (as the case may be) if the employee does not have any unused entitlement; or
- (b) if the employee has any unused entitlement – the sum of the amount mentioned in subsection (2)(a) or (b) (as the case may be) and the unused entitlement.

(4) The employer must grant the leave if the Registrar confirms that the employee is entitled to make the application.

(5) The leave must start –

- (a) having regard to the needs of the employer's business – as soon as practicable; or
- (b) from a date that is agreed upon between the employer and employee.

(6) The leave may be taken –

- (a) in one continuous period; or
- (b) if the employer and employee agree, in separate periods each of which is not less than 5 days.

(7) A Saturday, Sunday or a public holiday must not be counted as part of the leave.

(8) For this section –

- (a) a reference to an unused entitlement is a reference to so much of any previous entitlement of the employee under subsection (1) as has not been applied for payments of long service benefits to the employee; and

- (b) a reference to an amount mentioned in subsection (2)(a) or (b) for an employee who is also a registered contractor is a reference to so much of that amount as is reduced by any entitlement of the employee under section 20(1) that –
 - (i) is based on the same LSL credits or additional LSL credits mentioned in subsection (1)(a), (b) or (c) that relate to that amount; and
 - (ii) has been applied for payments of long service benefits to the employee as a registered contractor.

Example for section 18 –

John is a registered employee who has been credited with 78 days of LSL credits. John has never used any of his LSL credits to apply for long service leave or long service benefits. As John is employed by a registered employer, he is now entitled to be granted long service leave by that employer for a period not exceeding 65 days (see subsections (1) and (2)).

John is granted 65 days of long service leave. He will not be entitled to be granted long service leave again until he has been credited with 19.5 days of additional LSL credits (so as to make up the 32.5 days of additional LSL credits required by subsection (1)(b)).

Three years later, John has 32.5 days of LSL credits and is granted long service leave for 32 days. Because of subsection (1)(c), John will not be entitled to be granted long service leave again until he has been credited with 32 days of additional LSL credits.

19. Registered employee's entitlement to long service benefit

(1) A registered employee to whom long service leave has been granted under section 18 may apply to the Board for a long service benefit for the leave.

- (2) The application must be made to the Board in an approved form.
- (3) If the Board is satisfied that the applicant is entitled to be granted the leave –
 - (a) the Board must accept the application and pay a long service benefit for the leave to the applicant; and
 - (b) the amount of the benefit is worked out by multiplying the amount of the leave by the employee pay rate that was applicable to the applicant at the time of the application.
- (4) For subsection (3) –
 - (a) the amount of the leave must be expressed as a number (including a decimal number) of days; and
 - (b) the employee pay rate must be worked out in accordance with the Determinations.

(5) The Registrar must reduce the applicant's LSL credits by the amount of the leave if the Board decides to accept the application.

(6) The Board must refuse the application if the Board is not satisfied that the applicant is entitled to be granted the leave.

(7) Whether the Board decides to accept or refuse the application, the Board must, as soon as practicable after making the decision, give the applicant a notice stating –

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that the applicant is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.

20. Registered contractor's entitlement to long service benefit

(1) A registered contractor has an entitlement to be paid a long service benefit if any of the following occurs:

- (a) the contractor has been credited with a total of 65 days of LSL credits for the first time;
- (b) the contractor has been credited with a total of 32.5 days of additional LSL credits after the contractor was credited with the 65 days of LSL credits mentioned in paragraph (a);
- (c) whenever the contractor has again been credited with a total of 32.5 days of additional LSL credits after the contractor was credited with the 32.5 days of LSL credits mentioned in paragraph (b).

(2) The entitlement is for the contractor to be paid a long service benefit for an amount of LSL credits not exceeding –

- (a) if subsection (1)(a) applies – 65 days; or
- (b) if subsection (1)(b) or (c) applies – 32.5 days.

(3) If the contractor has an entitlement under subsection (1), the contractor may apply to the Board for a long service benefit for an amount of LSL credits (the "redeemed credits") not exceeding –

- (a) the amount mentioned in subsection (2)(a) or (b) (as the case may be) if the contractor does not have any unused entitlement; or

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- (b) if the contractor has any unused entitlement – the sum of the amount mentioned in subsection (2)(a) or (b) (as the case may be) and the unused entitlement.
- (4) The application must be made in an approved form.
- (5) If the Board is satisfied that the applicant is entitled to make the application –
 - (a) the Board must accept the application and pay a long service benefit for the redeemed credits to the applicant; and
 - (b) the amount of the benefit is worked out by multiplying the amount of the redeemed credits by the contractor pay rate that was applicable to the applicant at the time of the application.
- (6) For subsection (5) –
 - (a) the amount of the redeemed credits must be expressed as a number (including a decimal number) of days; and
 - (b) the contractor pay rate must be worked out in accordance with the Determinations.
- (7) The Registrar must reduce the applicant's LSL credits by the amount of the redeemed credits if the Board decides to accept the application.
- (8) The Board must refuse the application if the Board is not satisfied that the applicant is entitled to make the application.
- (9) Whether the Board decides to accept or refuse the application, the Board must, as soon as practicable after making the decision, give the applicant a notice stating –
 - (a) the decision;
 - (b) the reasons for the decision; and
 - (c) that the applicant is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.
- (10) For this section –
 - (a) a reference to an unused entitlement is a reference to so much of any previous entitlement of the contractor under subsection (1) as has not been applied for payments of long service benefits to the contractor; and

- (b) a reference to an amount mentioned in subsection (2)(a) or (b) for a contractor who is also a registered employee is a reference to so much of that amount as is reduced by any entitlement of the contractor under section 18(1) that –
 - (i) is based on the same LSL credits or additional LSL credits mentioned in subsection (1)(a), (b) or (c) that relate to that amount; and
 - (ii) has been applied for payments of long service benefits to the contractor as a registered employee.

21. Long service benefit on deregistration

- (1) This section applies in relation to a person if –
 - (a) the person is deregistered under section 13(1)(a), (b) or (c) and had at least 32.5 days of LSL credits immediately before the deregistration; or
 - (b) the person is deregistered under section 13(1)(d) and had at least one day of LSL credits immediately before the deregistration.
- (2) The deregistered person, or that person's personal representative if subsection (1)(b) applies, may apply for a long service benefit for the LSL credits.
- (3) The application must be –
 - (a) made to the Board in an approved form; and
 - (b) made within 4 years after the deregistration.
- (4) If the Board is satisfied that the applicant is entitled to make the application –
 - (a) the Board must accept the application and pay a long service benefit for the LSL credits to the applicant; and
 - (b) the amount of the benefit is worked out by multiplying the amount of the LSL credits by the relevant pay rate for the deregistered person.
- (5) For subsection (4) –
 - (a) the amount of the LSL credits must be expressed as a number (including a decimal number) of days; and

- (b) the relevant pay rate for the deregistered person is –
 - (i) if the person was last credited with qualifying service when the person was an employee – the employee pay rate that would have been applicable to the person when that credit was made; or
 - (ii) if the person was last credited with qualifying service when the person was a contractor – the contractor pay rate that would have been applicable to the person when that credit was made.

(6) The Board must refuse the application if the Board is not satisfied that the applicant is entitled to make the application.

(7) Whether the Board decides to accept or refuse the application, the Board must, as soon as practicable after making the decision, give the applicant a notice stating –

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that the applicant is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.

(8) Except in exceptional circumstances allowed by the Board, the Registrar must not register the deregistered person again as an employee or as a contractor if the Board decides to accept the application.

22. Long service benefit on ceasing to carry out construction work

(1) This section applies to a person who –

- (a) is a registered worker;
- (b) has ceased to carry out construction work; and
- (c) has at least 45.5 days of LSL credits.

(2) The person may apply for a long service benefit for an amount of LSL credits (the "redeemed credits") that is all or part of the person's LSL credits.

(3) The application must be –

- (a) made to the Board in an approved form; and
- (b) made within 4 years after the applicant ceased to carry out construction work.

(4) If the Board is satisfied that the applicant is entitled to make the application –

- (a) the Board must accept the application and pay a long service benefit for the redeemed credits to the applicant; and
- (b) the amount of the benefit is worked out by multiplying the amount of the redeemed credits by the relevant pay rate for the applicant.

(5) For subsection (4) –

- (a) the amount of the redeemed credits must be expressed as a number (including a decimal number) of days; and
- (b) the relevant pay rate for the applicant is –
 - (i) if the applicant was last credited with qualifying service when the applicant was an employee – the employee pay rate that would have been applicable to the applicant when that credit was made; or
 - (ii) if the applicant was last credited with qualifying service when the applicant was a contractor – the contractor pay rate that would have been applicable to the applicant when that credit was made.

(6) The Registrar must reduce the applicant's LSL credits by the amount of the redeemed credits if the Board decides to accept the application.

(7) The Board must refuse the application if the Board is not satisfied that the applicant is entitled to make the application.

(8) Whether the Board decides to accept or refuse the application, the Board must, as soon as practicable after making the decision, give the applicant a notice stating –

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that the applicant is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.

Division 3 – Obligations of registered workers

23. Employee's obligation to provide information

(1) The Registrar may, for the purposes of maintaining the Construction Workers Register, require a registered employee to provide the Registrar with any specified information about the employee's employment.

(2) The employee must not, without reasonable excuse –

- (a) fail to comply with the requirement; or
- (b) provide the Registrar with any information that is false or misleading in relation to that requirement.

Penalty: 100 penalty units.

24. Contractor's obligation to report

(1) A registered contractor must, within one month after the end of each reporting period (or within a longer period as the Registrar allows), provide a report in an approved form to the Registrar about –

- (a) the number of the contractor's days of service as a contractor in relation to the period to which the report relates; and
- (b) any other matters specified in the Determinations.

(2) The registered contractor must not, without reasonable excuse –

- (a) fail to comply with subsection (1); or
- (b) include any information that is false or misleading in a report made or purportedly made for subsection (1).

Penalty: 100 penalty units.

(3) For subsection (1), each of the following is a reporting period:

- (a) 1 July to 31 December (inclusive) of each year;
- (b) 1 January to 30 June (inclusive) of each year.

PART 3 – REGISTERED EMPLOYERS

Division 1 – Registration of employers

25. Construction Employers Register

(1) There is to be a Construction Employers Register.

(2) The Registrar must include in the Register the following information:

- (a) the name of each person who is a registered employer;
- (b) any other information about each registered employer as is required by the Determinations;
- (c) information about each registered employee employed by each registered employer as is required by the Determinations.

26. Registration

(1) A person must apply to be registered as an employer within the time mentioned in subsection (3) if the person –

- (a) employs one or more registered employees to carry out construction work in the Territory; and
- (b) is not any of the following:
 - (i) the Territory, a local government council or a statutory corporation;
 - (ii) the Commonwealth, a State or a body corporate established for a public purpose by a law of the Commonwealth or of a State;
 - (iii) any other person that is specified in the Determinations.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (2) The application must be made to the Registrar in an approved form.
- (3) The application must be made within –
 - (a) if the person first meets the conditions in subsection (1)(a) and (b) when this Act commences – the period of 3 months starting from that time or a longer period as the Registrar allows; or
 - (b) if the person first meets the conditions in subsection (1)(a) and (b) at a time after this Act has commenced – the period of one month starting from that time or a longer period as the Registrar allows.
- (4) The Registrar must register the applicant as an employer if the Registrar is satisfied that the applicant meets the requirements in subsection (1).

(5) The registration takes effect from the time when the registration is recorded in the Construction Employers Register.

(6) To avoid doubt –

- (a) a self-employed registered worker who does not employ any registered employees is not required to be registered under this section; and
- (b) the registration of a person under a reciprocal scheme does not prevent the person from being registered under this section.

27. Deregistration

(1) The Registrar must deregister a person as a registered employer if –

- (a) the person no longer meets the conditions in section 26(1)(a) and (b); and
- (b) the Registrar considers that it is unlikely that the person will employ any registered employees to carry out construction work in the Territory in the foreseeable future.

(2) The person ceases to be a registered employer from the time when the deregistration is recorded in the Construction Employers Register.

(3) The Registrar must give notice of the deregistration to the person.

(4) This section does not prevent a deregistered person from being registered again.

(5) The Registrar must not deregister a person as a registered employer except in accordance with this section.

Division 2 – Obligations of registered employers

28. Obligation to report

(1) A registered employer must, within one month after the end of each reporting period (or within a longer period as the Registrar allows), provide a report in an approved form to the Registrar about –

- (a) the number of days of service of each registered employee employed by the employer for that employment in relation to the period to which the report relates;
- (b) long service leave granted by the employer to any registered employee during that period; and
- (c) any other matters specified in the Determinations.

(2) Subsection (1)(a) does not apply in relation to an employee of the employer who has less than 3 days of service for that employment in relation to that period.

(3) The employer must not, without reasonable excuse –

(a) fail to comply with subsection (1); or

(b) include any information that is false or misleading in a report made or purportedly made for subsection (1).

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(4) For subsection (1), each of the following is a reporting period:

(a) 1 July to 31 December (inclusive) of each year;

(b) 1 January to 30 June (inclusive) of each year.

29. Obligation to notify termination of employment

(1) A registered employer must, within 14 days after the termination of the employer's employment of a registered employee, notify the Registrar of that termination in an approved form.

(2) Subsection (1) does not apply in relation to an employee who has less than 3 days of service for that employment.

(3) The employer must not, without reasonable excuse, fail to comply with subsection (1).

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

30. Obligation to keep records

(1) A registered employer must, in accordance with the Determinations, keep records about each registered employee employed by the employer.

(2) Without limiting subsection (1), the Determinations may require the keeping of a record in relation to the employee's days of service for that employment in relation to the period to which the record relates.

(3) Subsection (1) does not apply in relation to an employee of the employer who has less than 3 days of service for that employment in relation to that period.

- (4) The employer must not, without reasonable excuse –
 - (a) fail to comply with subsection (1); or
 - (b) include any information that is false or misleading in a record kept or purportedly kept under subsection (1).

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

31. Annual certificate

(1) The Registrar must, as soon as practicable after the end of each financial year, give each registered employer a certificate stating –

- (a) the names of each registered employee employed by the employer during that year;
- (b) that the employer is entitled to apply for a reconsideration or review under Part 5, Division 4 in relation to –
 - (i) the information in the certificate; or
 - (ii) the information in the Construction Employers Register that relates to the employer; and
- (c) any other matters as are required by the Determinations.

(2) The certificate must be based on the information in the Construction Employers Register.

(3) The Registrar may correct any errors in the certificate by issuing a revised certificate to the employer at a later time.

PART 4 – FUNDING FOR SCHEME

Division 1 – Long service levy

32. Imposition of levy

- (1) A long service levy is imposed on any construction work –
 - (a) that starts after this Act commences; and
 - (b) the cost of which is at least –
 - (i) \$200 000; or

- (ii) if the Regulations prescribe an amount for this section – that amount.
- (2) The levy is imposed on only so much of the construction work as is not –
 - (a) considered by the Board to be –
 - (i) carried out for or by a body (whether incorporated or not) formed or carried on for a purpose other than pecuniary gains to its members; and
 - (ii) attributable to voluntary labour or donated materials;
 - (b) construction work for a Class 1a(i) or Class 10 building under the Building Code of Australia published by or on behalf of the Australian Building Codes Board and as in force from time to time; or
 - (c) exempt by the Regulations.
- (3) Subsection (2)(b) has effect subject to the Regulations.

33. Amount of levy

- (1) The amount of the levy is the percentage prescribed by the Regulations of the cost of the construction work on which the levy is imposed.
- (2) An amount calculated under subsection (1) is to be rounded to the nearest dollar (with 50c to be rounded downwards).

34. Who must pay levy

- (1) If –
 - (a) construction work is to be carried out for one or more of the following entities (an "interstate government entity"):
 - (i) the Commonwealth;
 - (ii) a State;
 - (iii) a body corporate established for a public purpose by a law of the Commonwealth or of a State; and
 - (b) one contractor is engaged by the entity or entities to carry out the work,
- the contractor is liable to pay the levy imposed on the work.

(2) If –

- (a) construction work is to be carried out for one or more interstate government entities; and
- (b) more than one contractor is engaged by the entity or entities to carry out the work,

each contractor is liable to pay so much of the levy imposed on the work as is attributable to that contractor's share of the work.

(3) To avoid doubt, a reference to a contractor in subsection (1) or (2) does not include a reference to a subcontractor.

(4) If construction work is to be carried out for a person who is not an interstate government entity, the person is liable to pay the levy imposed on the work.

(5) If construction work is to be carried out for more than one person all of whom are not interstate government entities, the Board may, having regard to the matters set out in subsection (6), decide that –

- (a) each person is liable to pay so much of the levy imposed on the work as is attributable to the person's share of the interest in the work;
- (b) each person is jointly and severally liable to pay the levy imposed on the work;
- (c) only some of those persons are liable to pay the levy imposed on the work and that each of them is liable to pay the levy as provided by paragraph (a) or (b); or
- (d) only one person is liable to pay the levy imposed on the work.

(6) The Board must have regard to all of the following matters when making a decision under subsection (5):

- (a) the extent to which a person provides the funding for the work;
- (b) the extent to which a person has the ownership or control of, or any interest in, the work or the site of the work;
- (c) the extent to which a person derives any direct or indirect benefit from the work;
- (d) any other circumstances that the Board considers relevant.

(7) The Regulations may make provision, consistent with this section, about –

- (a) the application of any of the provisions in subsections (1) to (6) (inclusive); or
- (b) the liability of a person to pay the levy in circumstances not covered by any of the provisions in subsections (1) to (6) (inclusive).

35. When levy must be paid

A person who is liable to pay an amount of the levy for construction work must pay that amount to the Board –

- (a) before the construction work starts; or
- (b) if the Board allows a later time for the payment under section 44, 46 or 48 – at or before the later time.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

Division 2 – Board's powers relating to levy

36. When construction work starts and ends

Unless the Board otherwise decides, the time at which construction work starts or ends is the time at which the work starts or ends (as the case may be) at the site of the work.

37. Cost of construction work

- (1) The cost of construction work is –
 - (a) the total contract prices for all the construction contracts in relation to the work (the "contract price for the work"); or
 - (b) the amount decided by the Board to be the total cost of the work, where –
 - (i) there is no contract price for the work; or
 - (ii) the Board considers that the contract price for the work does not reflect the total cost of the work.

(2) Except as the Regulations otherwise provide, for subsection (1)(a), construction contract has the same meaning as in the *Construction Contracts (Security of Payments) Act*.

(3) Without limiting subsection (1)(b), in deciding the total cost of the work, the Board must take into account –

- (a) the cost of labour, materials (including prefabricated goods and installation), equipment, design, project management, consultancy and any other cost that directly or indirectly relates to the work; and
- (b) if the construction work is to be carried out in stages or under a number of contracts or other arrangements – the total cost in relation to those stages, contracts or arrangements.

38. Person for whom construction work carried out

(1) The Board may decide who is to be treated as a person for whom construction work is to be carried out, having regard to all of the following:

- (a) whether or not the person provides the funding for the work;
- (b) whether or not the person has the ownership or control of, or any interest in, the work or the site of the work;
- (c) whether or not the person derives any direct or indirect benefit from the work;
- (d) any other circumstances that the Board considers relevant.

(2) For subsection (1), the Board may, by written notice, require a person to provide the Board with any specified information, document or thing in order to identify a person for whom construction work is to be carried out.

(3) The person to whom the notice is given must not, without reasonable excuse –

- (a) fail to comply with the requirement;
- (b) provide the Board with any information in relation to that requirement that the person knows to be false or misleading; or
- (c) unless subsection (4) applies, give a document or thing to the Board knowing that it contains false or misleading information.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(4) This subsection applies if the person, when giving the document or thing –

- (a) tells the Board, to the best of the person's ability, how the document or thing contains false or misleading information; and

- (b) if the person has, or can reasonably obtain, the correct information – gives the correct information to the Board.

39. Board may order work to stop

- (1) This section applies to a person who –
 - (a) is liable to pay an amount of the levy for construction work; and
 - (b) fails to pay that amount when it becomes payable.
- (2) Despite any other law in force in the Territory, the Board may, having regard to the circumstances of the case, order that the work be stopped from a specified time until the amount is paid.
- (3) The Board may do so by notice given to –
 - (a) the person; and
 - (b) if the person does not carry out the work – a person who is carrying out the work (other than a construction worker).
- (4) A person carrying out the work and to whom the notice is given must comply with the notice.

Penalty: If the offender is a natural person – 200 penalty units and a default penalty of 2 penalty units per day.

If the offender is a body corporate – 1 000 penalty units and a default penalty of 10 penalty units per day.

- (5) For subsection (4), if a court is satisfied that –
 - (a) a person is guilty of an offence against that subsection; and
 - (b) the offence continued to be committed after the first day on which it was committed,

the court may, in addition to the penalty for the offence, impose the default penalty for each day during which the offence continued to be committed after the first day on which it was committed.

Division 3 – Obligations relating to levy

40. Obligation to notify – person for whom work carried out

- (1) The person for whom construction work is to be carried out must give notice to the Board about the work in an approved form before the work starts.

- (2) Subsection (1) does not apply if –
 - (a) no levy is imposed on the work because of section 32(1); or
 - (b) the work or the person is exempt by the Regulations for this section.
- (3) A person who contravenes subsection (1) is guilty of an offence.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

41. Obligation to notify – Territory etc.

- (1) This section applies if –
 - (a) the Territory, a local government council or a statutory corporation (the "relevant entity") is to carry out construction work; and
 - (b) the levy is imposed on the construction work.
- (2) The relevant entity must give notice to the Board about the work in an approved form before the work starts.
- (3) The relevant entity is not required to give notice under subsection (2) if –
 - (a) the relevant entity –
 - (i) is also required to give notice under section 40 in relation to the work; and
 - (ii) has given that notice; or
 - (b) the relevant entity has entered into an arrangement with the Board for an alternative process of notifying the Board about the work.

42. Disclosure of information

- (1) This section applies if the Board reasonably believes that a person has not paid the full amount of the levy that the person is liable to pay.
- (2) For subsection (1), the Board may, by written notice, require a person to provide the Board with any specified information, document or thing in order to work out that full amount.
- (3) The person must not, without reasonable excuse –
 - (a) fail to comply with the requirement;

- (b) provide the Board with any information in relation to that requirement that the person knows to be false or misleading; or
- (c) unless subsection (4) applies, give a document or thing to the Board knowing that it contains false or misleading information.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (4) This subsection applies if the person, when giving the document or thing –
 - (a) tells the Board, to the best of the person's ability, how the document or thing contains false or misleading information; and
 - (b) if the person has, or can reasonably obtain, the correct information – gives the correct information to the Board.

Division 4 – Levy collection

43. Levy collectors

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

44. Payment by instalments

- (1) A person who is liable to pay an amount of the levy may apply to the Board for the payment to be made by instalments if –
 - (a) the amount of the levy exceeds the amount prescribed by the Regulations for this subsection; and
 - (b) the time reasonably needed to carry out the construction work exceeds one year.
- (2) The Board may approve or refuse the application.
- (3) If the Board approves the application –
 - (a) the first instalment –
 - (i) must not be less than the amount prescribed for subsection (1)(a); and

- (ii) must be paid to the Board at or before the time when the amount of the levy would, apart from this section, be payable by the person; and
- (b) each subsequent instalment –
 - (i) must be equal to the amount decided by the Board and notified to the person; and
 - (ii) must be paid within the time decided by the Board and notified to the person.
- (4) A time decided by the Board for subsection (3)(b)(ii) must be before the construction work ends.
- (5) An instalment –
 - (a) does not bear interest under section 45; and
 - (b) is not recoverable under section 47.
- (6) However, if a person fails to pay an instalment in accordance with subsection (3) –
 - (a) the approval under this section ceases to have effect; and
 - (b) the amount of the levy that remains unpaid by the person –
 - (i) immediately becomes payable;
 - (ii) starts to bear interest under section 45; and
 - (iii) is recoverable under section 47.
- (7) Subsection (6) does not apply if the Board is satisfied that the subsection should not apply because of the special circumstances of the case.

45. Interest payments

- (1) Any unpaid amount of the levy starts to bear interest at the rate specified in the Regulations immediately after the amount becomes payable.
- (2) An unpaid amount of the interest –
 - (a) must not be treated as an unpaid amount of the levy for subsection (1); but
 - (b) is taken to be an unpaid amount of the levy for all other purposes.

(3) Without limiting subsection (2)(b), an unpaid amount of the interest may be recovered under section 47.

46. Assessment of levy

(1) The Board may make an assessment of the amount or additional amount of the levy that is payable by a person if the Board considers that the person –

- (a) is liable to pay an amount of the levy; but
- (b) has not paid that amount or fully paid that amount.

(2) After making the assessment, the Board may give a notice of the assessment to the person, stating –

- (a) the amount or additional amount that the person is liable to pay; and
- (b) the time (other than a time before the construction work starts) by which it must be paid.

(3) The person must pay the amount or additional amount in accordance with the notice.

47. Recovery of levy

An amount of the levy –

- (a) is a debt due to the Board from the time when the amount becomes payable; and
- (b) may be sued for and recovered in any court of competent jurisdiction by –
 - (i) the Board; or
 - (ii) a person appointed by the Board to act on its behalf.

48. Board's power to extend time for payment etc.

Despite any other provisions in this Part, the Board may, in special circumstances, direct that –

- (a) the time for the payment of an amount of the levy by a person be changed to a later time that is decided by the Board;
- (b) an amount of the levy be payable by a person in instalments, and at intervals, decided by the Board; or

- (c) the amount of any interest payable under section 45 by a person be waived or reduced by an amount that is decided by the Board.

49. Effect of penalty payments

To avoid doubt, the payment of a penalty as a result of the commission of an offence against a provision in this Act does not relieve a person from a liability to pay an amount of the levy.

Division 5 – Other matters about levy

50. Notification about decision

(1) If the Board makes a decision that relates to a person's liability to pay the levy, the Board must provide the person with a notice stating –

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that the person is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.

(2) Without limiting subsection (1), any of the following is a decision that relates to a person's liability to pay the levy:

- (a) a decision that a person is liable to pay a particular amount of the levy;
- (b) a decision to treat a person as a person for whom construction work is to be carried out;
- (c) a decision that the construction work carried out by or for a person starts or ends on a particular day;
- (d) a decision about the total cost of the construction work that is carried out by or for a person;
- (e) a decision to refuse a person's application to pay an amount of the levy by instalments.

51. General offence

A person must not engage in an act (including an omission) with the intention of avoiding the person's obligations under this Part.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

Division 6 – Contribution for pre-commencement construction work

52. Pre-commencement construction work

- (1) This section applies to any construction work that –
 - (a) started before the commencement of this Act; and
 - (b) is carried out by persons some or all of whom are registered workers.
- (2) The Board may enter into an arrangement with a person who would have been liable to pay an amount of the levy for the work if the work had started after the commencement of this Act.
- (3) The arrangement may provide for payments to be made by the person to the Board for the registered workers' entitlements under this Act.
- (4) The Regulations may make provision, consistent with this Act, about such an arrangement.

PART 5 – ADMINISTRATION OF SCHEME

Division 1 – Board

53. Establishment of Board

- (1) There is to be a Board for the Scheme.
- (2) The Board is to be known by its corporate name NT Build.
- (3) The Board –
 - (a) is a body corporate;
 - (b) has a common seal; and
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (4) All courts, judges and persons acting judicially must –
 - (a) take judicial notice of the common seal of the Board affixed to a document; and
 - (b) presume that the seal was duly affixed.

54. Constitution of Board

(1) The Board consists of at least 5 but not more than 7 members appointed by the Minister.

(2) The Minister must appoint the following 5 Board members:

- (a) the Chairperson;
- (b) 2 members who represent organisations that represent the interests of employers in the Territory;
- (c) 2 members who represent organisations that represent the interests of employees in the Territory.

(3) The Minister may appoint up to 2 additional Board members.

(4) A Board member holds office for the period (not exceeding 5 years) specified in the appointment and is eligible for re-appointment.

55. Functions of Board

The functions of the Board are –

- (a) to administer the Scheme; and
- (b) to advise and make recommendations to the Minister about the operation of this Act.

56. Powers of Board

(1) The Board may do everything necessary and convenient to be done for the performance of its functions.

(2) Without limiting subsection (1), the Board has the power to –

- (a) enter into any agreements (including agreements to borrow or invest money);
- (b) engage persons to assist the Board in exercising a power or performing a function under this Act; and
- (c) give effect to reciprocal agreements.

(3) This section has effect subject to sections 64(2), 67 and 73.

57. Board may make determinations

(1) The Board may, consistent with this Act, make determinations (the "Determinations") prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Board must make the Determinations in consultation with the Registrar.

(3) The Determinations are taken to be –

- (a) regulations to which section 57 of the *Interpretation Act* applies; and
- (b) rules to which section 63 of that Act applies.

58. How Board must exercise powers and perform functions

The Board must exercise its powers and perform its functions in a manner that –

- (a) is reasonable; and
- (b) accords with and furthers the object of this Act.

59. Persons assisting Board

In exercising its powers or performing its functions, the Board may be assisted by –

- (a) the Registrar;
- (b) any person who –
 - (i) is an employee within the meaning of the *Public Sector Employment and Management Act*; and
 - (ii) is made available to the Board with the agreement of the Commissioner for Public Employment; and
- (c) any other person engaged by the Board.

60. Delegation

(1) The Board may delegate any of its powers or functions to a person mentioned in section 59(a), (b) or (c).

- (2) The delegation must be in writing.

61. Acting appointment

(1) The Minister may appoint a person to act as a Board member if a Board member (the "absent member") is absent or otherwise unable to perform the functions of the member.

(2) However, if the absent member was appointed to represent a particular organisation, the person appointed to act as a Board member must also represent that organisation.

62. Vacation of office

A Board member vacates the member's office if –

- (a) the term of the office expires;
- (b) the member resigns by writing signed by the member and delivered to the Minister; or
- (c) the Minister terminates the member's appointment.

63. Termination of appointment

(1) The Minister may terminate a Board member's appointment on the grounds of inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister must terminate a Board member's appointment if the member –

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the member's remuneration for their benefit;
- (b) is convicted in Australia of an offence punishable by imprisonment for 12 months or longer;
- (c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board; or
- (d) fails to comply with section 65(1) or (3).

64. Board meetings

(1) The Chairperson must convene as many Board meetings as are necessary for the Board to exercise its powers or to perform its functions.

(2) The Minister may direct the Chairperson to convene a meeting to deal with any matter specified by the Minister.

(3) The Chairperson must comply with the direction.

(4) At a Board meeting, 4 Board members constitute a quorum.

(5) The Board must keep accurate minutes of the Board meetings.

(6) The Chairperson is the presiding member of a Board meeting.

(7) However, if the Chairperson is absent from a Board meeting, the Board members present at the meeting must elect one of those members to be the presiding member.

(8) At a Board meeting, the presiding member –

(a) has a deliberative vote; and

(b) in the event of an equality of votes, also has a casting vote.

65. Disclosure of interest

(1) If a Board member has a direct or indirect interest in a matter being considered or about to be considered by the Board, the member must disclose the nature of the interest in a Board meeting as soon as practicable after the relevant facts come to the member's knowledge.

Penalty: 100 penalty units.

(2) The disclosure must be recorded in the Board's minutes.

(3) The member must not, while having that interest –

(a) take part in any deliberation or decision of the Board relating to that matter; or

(b) form part of the quorum of the Board in any deliberation or decision of the Board relating to that matter.

Penalty: 100 penalty units.

(4) However, subsection (3) does not apply if the Board resolves that the subsection does not apply to the member.

(5) Despite such a resolution, the member may refuse to take part in any deliberation or decision of the Board relating to that matter.

(6) The Board must maintain a register of the interests of the Board members.

66. Provision of information to Minister

(1) The Minister may request the Board to provide the Minister with any information about the administration of the Scheme (including information about the Board's financial position or financial affairs) as is specified by the Minister.

(2) The Board must comply with the request.

67. Direction by Minister

(1) The Minister may give any direction to the Board about the exercise of any of its powers or the performance of any of its functions.

(2) The Board must comply with the direction.

(3) The Minister must table in the Legislative Assembly a copy of the direction within 6 sitting days after making the direction.

(4) The annual report of the Board prepared under section 68 for a financial year must include a record of each direction given under subsection (1) in that year.

68. Annual report

(1) For each financial year, the Board must prepare an annual report on its operation during that year.

(2) The report must include –

(a) each record that is required to be included in the report under section 67(4);

(b) financial statements relating to the Board's operation for that year; and

(c) the Auditor-General's report on the financial statements that is provided to the Board under section 69.

(3) The financial statements must –

(a) be in a form that is approved by the Treasurer; and

(b) unless the Treasurer otherwise directs – be prepared according to commercial accounting principles.

(4) The Board must provide the Minister with the annual report within –

(a) one month after receiving the Auditor-General's report; or

(b) if another period is specified by the Minister – that period.

(5) The Minister must table in the Legislative Assembly a copy of the annual report within 6 sitting days after receiving that report.

69. Board to provide Auditor-General with financial statements

(1) The Board must provide the Auditor-General with the financial statements that are to be included in an annual report prepared under section 68 for a financial year.

(2) The Board must do so within –

(a) 2 months after the end of that year; or

(b) if another period is specified by the Minister – that period.

(3) The Auditor-General must –

(a) audit the financial statements; and

(b) report to the Board on the financial statements.

(4) The Auditor-General must do so within –

(a) 2 months after receiving the financial statements; or

(b) if another period is specified by the Administrator – that period.

Division 2 – Financial matters etc.

70. Money of Board

(1) The money of the Board consists of –

(a) amounts of the levy paid to the Board;

(b) amounts borrowed by the Board;

(c) proceeds from the Board's investments;

(d) amounts paid to the Board under reciprocal agreements;

(e) amounts paid to the Board under an arrangement under section 52;
and

(f) any other amounts received by the Board.

(2) The money of the Board can only be applied for the following purposes:

- (a) payments of long service benefits;
- (b) expenses incurred in administering the Scheme;
- (c) borrowings by the Board;
- (d) investments by the Board;
- (e) payments to reciprocal authorities under reciprocal agreements;
- (f) any other payments in relation to the Scheme.

(3) The money of the Board can only be applied with the Board's authority.

71. Account keeping etc.

- (1) The Board must ensure that –
 - (a) proper accounts and records of the Board's transactions and financial affairs are kept;
 - (b) there are adequate controls over the incurring of the Board's liabilities;
 - (c) all payments out of the Board's money are correctly made and properly authorised; and
 - (d) adequate control is maintained over –
 - (i) the Board's property; and
 - (ii) property in the Board's custody, control or management.

(2) The Treasurer may request the Board to provide the Treasurer with any information that the Treasurer reasonably requires to accurately assess the Board's financial position or financial affairs.

- (3) The Board must comply with the request.

72. Refund or additional payment

- (1) The Board must pay to a person –
 - (a) any amount (including all or part of an amount of the levy) that the person has overpaid to the Board; or

- (b) any amount (including all or part of an amount of a long service benefit) that the Board has underpaid to the person.

(2) The Board must make the payment as soon as practicable after the Board becomes aware of the overpayment or underpayment.

73. Treasurer's approval

(1) The Board may only borrow money on terms and conditions approved by the Treasurer.

(2) The Treasurer may, in writing, specify classes of investment in which the Board may invest its money without the Treasurer's approval.

(3) The Board –

- (a) may, without the Treasurer's approval, invest its money in an investment of a class that is specified under subsection (2); and
- (b) may only invest its money in any other investment with the Treasurer's approval.

74. Prudential and other standards

(1) The Regulations may make provision, consistent with this Act, about the prudential and other standards for the administration of the Scheme.

(2) Without limiting subsection (1), the Regulations may specify –

- (a) the prudential and other standards that the Board must apply in administering the Scheme; and
- (b) the procedures for the monitoring or enforcement of those standards, including the appointment of persons to carry out the monitoring.

75. Effect of non-compliance

(1) The validity of an act of the Board is not affected by a failure to –

- (a) comply with a direction of the Minister that is given under section 64(2) or 67; or
- (b) obtain an approval of the Treasurer as required by section 73.

(2) Without limiting subsection (1), the validity of a contract for an investment mentioned in section 73(3)(b) is not affected by a failure of the Board to obtain an approval of the Treasurer for that contract.

Division 3 – Registrar

76. Appointment of Registrar

- (1) The Board must appoint a person to be the Registrar for the Scheme.
- (2) The Registrar must be a person who –
 - (a) is an employee within the meaning of the *Public Sector Employment and Management Act*; and
 - (b) is made available to the Board with the agreement of the Commissioner for Public Employment.

77. Registrar's powers and functions

- (1) The Registrar –
 - (a) must administer the Scheme (including exercising the Registrar's powers and performing the Registrar's functions under this Act) in accordance with any direction given by the Board; and
 - (b) may exercise any of the Board's powers or perform any of the Board's functions as is authorised by the Board.
- (2) Without limiting subsection (1), the Registrar must, in accordance with any direction given by the Board, maintain –
 - (a) the Construction Workers Register; and
 - (b) the Construction Employers Register.

78. Delegation

- (1) The Registrar may delegate any of the Registrar's powers or functions to a person mentioned in section 59(b) or (c).
- (2) The delegation must be in writing.

79. Approved forms

The Registrar may approve forms for this Act.

80. Inspection

(1) The Registrar may carry out inspections for the purposes of monitoring compliance with this Act, including compliance with this Act by any of the following persons:

- (a) construction workers;
- (b) persons who employ or engage construction workers;
- (c) persons (other than construction workers) who carry out or are to carry out construction work;
- (d) persons for whom construction work is or is to be carried out.

(2) The Registrar may –

- (a) at any reasonable time, enter a place (including residential premises) which the Registrar reasonably believes to be occupied for a purpose that relates to –
 - (i) the employment or engagement of construction workers; or
 - (ii) construction work on which the levy is or may be imposed;
- (b) require a person at that place to provide the Registrar with any information or records relating to that employment, engagement or construction work (as the case requires);
- (c) make copies of such records; or
- (d) operate any electronic equipment at the place for the purposes of retrieving such records.

(3) Subject to subsection (4), a person must not, without reasonable excuse –

- (a) obstruct, resist or hinder the Registrar from doing any of the things mentioned in subsection (2);
- (b) fail to comply with a requirement given to the person by the Registrar for the purposes of doing any of those things; or
- (c) fail to comply with a requirement mentioned in subsection (2)(b).

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(4) If the Registrar enters a place without producing the Registrar's identity card when requested to do so –

- (a) the Registrar is not authorised to remain at that place; and
- (b) a person is not required to comply with a requirement mentioned in subsection (3)(b) or (c).

81. Registrar may require provision of information

(1) The Registrar may, by written notice –

- (a) require a person who employs or engages construction workers to provide the Registrar with any information relating to that employment or engagement; or
- (b) require any of the following persons to provide the Registrar with any information relating to construction work on which the levy is or may be imposed:
 - (i) a person who carries out or is to carry out the work;
 - (ii) a person for whom the work is or is to be carried out.

(2) A person to whom the notice is given must not, without reasonable excuse –

- (a) fail to comply with the requirement within 14 days after receiving the notice; or
- (b) provide the Registrar with any information that the person knows to be false or misleading in relation to that requirement.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

82. Identity cards

(1) When performing the Registrar's functions under section 80, the Registrar must carry an identity card provided by the Board that –

- (a) states the name and office of the Registrar;
- (b) includes a photograph of the Registrar; and
- (c) contains –
 - (i) the signature of the Registrar; and

- (ii) the verification of that signature by the Board.

(2) If a delegate of the Registrar performs the Registrar's functions under section 80, the delegate must carry an identity card provided by the Registrar that –

- (a) states the name and office of the delegate;
- (b) specifies the delegation under which the delegate may exercise the Registrar's powers or perform the Registrar's functions;
- (c) includes a photograph of the delegate; and
- (d) contains –
 - (i) the signature of the delegate; and
 - (ii) the verification of that signature by the Registrar.

(3) A person who ceases to be a delegate of the Registrar must immediately return the delegate's identity card to the Registrar.

Penalty: 20 penalty units.

Division 4 – Reconsideration and review

83. Application

This Division applies in relation to the following decisions:

- (a) a decision to refuse to register a person under section 12;
- (b) a decision to deregister a person under section 13(1)(a);
- (c) a decision to –
 - (i) refuse an application by a person for a long service benefit under section 19, 20, 21 or 22;
 - (ii) pay a long service benefit to a person under section 19, 20, 21 or 22; or
 - (iii) require an employer to pay an amount for the recognition of a previous service under section 95 or 96;
- (d) a decision that relates to a person's liability to pay the levy (*see* section 50);
- (e) a decision concerning the information included in an annual certificate that is given to a person;

- (f) a decision concerning the information about a person who is a registered worker that is included in the Construction Workers Register;
- (g) a decision concerning the information about a person who is a registered employer that is included in the Construction Employers Register.

84. Reconsideration by Board

(1) A person may apply to the Board for the reconsideration of a decision to which this Division applies if the person –

- (a) is the person mentioned in section 83(a), (b), (c), (d), (e), (f) or (g) in relation to the decision; and
- (b) is dissatisfied with the decision.

(2) An application by a person for a reconsideration of a decision mentioned in section 83(a), (b), (c) or (d) must be made within 28 days after the notice for the decision is given to the person.

(3) An application by a person for a reconsideration of a decision mentioned in section 83(e) must be made within 45 days after the annual certificate is given to the person.

(4) An application by a person for a reconsideration of a decision mentioned in section 83(f) or (g) may be made at any time.

(5) An application must be made in an approved form.

(6) On receiving the application, the Board may reconsider the decision as it thinks fit.

(7) The application does not affect the operation or implementation of the decision.

(8) However, the Board may make another decision staying or otherwise affecting the operation or implementation of so much of the decision as the Board considers appropriate to effectively decide the application.

(9) The other decision –

- (a) is subject to the conditions specified in it; and
- (b) has effect –
 - (i) for the period specified by the Board; or

- (ii) if no period is specified by the Board – until the application is decided.

(10) The Board is taken to have refused the application if the Board fails to give the applicant a notice of its decision on the application within 30 days after it received the application.

85. Review by Court

(1) A person who has applied for a reconsideration under section 84 may apply to the Local Court for a review of the Board's decision on the reconsideration if the person is dissatisfied with that decision.

(2) The application must be made within –

- (a) 28 days after the Board gives a notice of that decision if the notice is given within 30 days after the Board received the application for the reconsideration; or
- (b) in any other case – a longer period that is specified in the Regulations.

(3) The Court may conduct the review as it thinks fit.

(4) In reviewing that decision, the Court may –

- (a) affirm the decision; or
- (b) set aside the decision and substitute a new decision.

(5) The Court must give reasons for its decision.

(6) The application for the review of the Board's decision does not affect the operation or implementation of the decision.

(7) However, the Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively decide the application.

(8) The order –

- (a) is subject to the conditions specified in it; and
- (b) has effect –
 - (i) for the period specified by the Court; or
 - (ii) if no period is specified by Court – until the application is decided.

(9) The Court's decision has effect as if it had been made by the Board or the Registrar for this Act (except this Division).

Division 5 – Reciprocal agreements

86. Minister may enter into reciprocal agreement

(1) The Minister may enter into an agreement with a Minister of a State if –

- (a) the Minister of the State is responsible for administering a law that establishes a scheme that relates to long service leave for construction workers (the "reciprocal scheme"); and
- (b) the agreement makes provision for the mutual recognition of matters arising from the Scheme and from the reciprocal scheme.

(2) Without limiting subsection (1)(b), the agreement may make provision about –

- (a) the payments of amounts –
 - (i) by the Board to a person or body (the "reciprocal authority") for the reciprocal authority's recognition of all or part of the qualifying service of a registered worker; or
 - (ii) by the reciprocal authority to the Board for the Board's recognition of a period of service (including a period before the commencement of this Act) credited to a registered worker under the reciprocal scheme;
- (b) the exchange of information between the Board and the reciprocal authority; or
- (c) any other matters relating to long service leave for construction workers as the Minister thinks necessary or convenient.

(3) After entering into the agreement, the Minister must, by notice in the *Gazette* –

- (a) state that the Minister has entered into the agreement; and
- (b) declare that the agreement is a reciprocal agreement for this Act.

87. Transfer of credits to Scheme

(1) A registered worker may apply to the Board in an approved form for the Board's recognition of a period of service credited to the worker (the "previous service") under a reciprocal scheme.

(2) On receiving the application, the Board must request the reciprocal authority for the scheme to pay to the Board an amount for the recognition in accordance with the reciprocal agreement to which the scheme relates.

(3) On receiving the payment –

(a) the Board must, in accordance with the Determinations, recognise so much of the previous service as corresponds to the payment; and

(b) the Registrar must –

(i) convert the recognised service into an LSL credit for the worker in accordance with the Determinations; and

(ii) credit the worker with the LSL credit.

(4) This section has effect subject to the reciprocal agreement.

88. Transfer of credits out of Scheme

(1) The Board may, in accordance with the Determinations –

(a) allow all or part of the qualifying service of a registered worker to be recognised by a reciprocal authority for a reciprocal scheme; and

(b) pay an amount to the reciprocal authority for that recognition.

(2) After making the payment, the Registrar must –

(a) disregard so much of that qualifying service as is so recognised; and

(b) adjust the worker's LSL credits in accordance with the Determinations.

(3) This section has effect subject to the reciprocal agreement to which the reciprocal scheme relates.

Division 6 – Other administrative matters

89. Protection from liability

(1) This section applies to a person who is or has been –

(a) a Board member; or

(b) a person mentioned in section 59(a), (b) or (c).

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Board in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(4) Subsections (2) and (3) do not affect any liability the Territory or the Board would, apart from those subsections, have for the act or omission.

90. Secrecy

- (1) This section applies to a person who is or has been –
 - (a) a Board member; or
 - (b) a person mentioned in section 59(a), (b) or (c).
- (2) The person must not –
 - (a) record any information obtained by the person in exercising a power or performing a function under this Act;
 - (b) disclose any such information to a person or body (including a court);
 - (c) publish all or part of a document obtained by the person in exercising a power or performing a function under this Act; or
 - (d) produce to a court a document or any other thing obtained by the person in exercising a power or performing a function under this Act.
- (3) Subsection (2) does not apply in relation to –
 - (a) any recording, disclosure, publishing or production that is part of the exercise of a power or the performance of a function under this Act;
 - (b) any recording, disclosure, publishing or production in relation to the administration of this Act; or
 - (c) any recording, disclosure, publishing or production for –
 - (i) a person who is the subject of the information, document or thing;

- (ii) another person with the consent of the person mentioned in subparagraph (i) (whether the consent has been given expressly or by implication); or
 - (iii) a person prescribed by the Regulations.
- (4) A person who fails to comply with subsection (2) is guilty of an offence.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

91. Appointment of actuary

- (1) The Minister must appoint an actuary for the Scheme within –
 - (a) 3 months after the commencement of this Act; and
 - (b) whenever the Minister was last provided with a report by an actuary under this section – 3 years after that report was provided.
- (2) The actuary so appointed must conduct a review of –
 - (a) the administration of the scheme (including any financial aspect of that administration);
 - (b) the methods used in working out long service benefits; and
 - (c) the levy rate.
- (3) The actuary must provide the Minister with a report on the review within the time specified by the Minister.
- (4) The actuary may make any recommendation in the report about any of the matters mentioned in subsection (2)(a), (b) or (c).
- (5) Without limiting subsection (4), the actuary may recommend a new levy rate.
- (6) The Minister must table in the Legislative Assembly a copy of the report within 6 sitting days after receiving the report.

92. Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters –
 - (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may prescribe for an offence against the Regulations a fine not exceeding –

- (a) if the offender is a natural person – 100 penalty units; or
- (b) if the offender is a body corporate – 500 penalty units.

PART 6 – TRANSITIONAL MATTERS FOR CONSTRUCTION INDUSTRY LONG SERVICE LEAVE AND BENEFITS ACT 2004

Division 1 – Transitional matters relating to Long Service Leave Act

93. Application

Except as provided by this Division –

- (a) a person's qualifying service under the *Long Service Leave Act* must not be taken into account for any purposes of this Act; and
- (b) a person's qualifying service under this Act must not be taken into account for any purposes of the *Long Service Leave Act*.

94. Interpretation

- (1) In this Division, unless the contrary intention appears –

"commencement day" means the day on which the *Construction Industry Long Service Leave and Benefits Act 2004* commences;

"previous service", for a transitional employee, means so much of the continuous service for which the employee is employed –

- (a) as occurred before 1 January 2005; and
- (b) as has not given rise to any long service leave granted, or payments made, to the employee under the *Long Service Leave Act*;

"transitional employee" means a person –

- (a) who is registered as an employee on the commencement day (or at a later time allowed by the Registrar);
- (b) who is employed for a continuous service that started before, and remains unbroken after, the commencement day; and

- (c) to whom the *Long Service Leave Act* would, apart from this Act, apply in relation to that continuous service.

(2) For this Division, the questions whether an employee is employed for a continuous service and whether the continuity of that service remains unbroken must be determined in accordance with the *Long Service Leave Act*.

95. Recognition of previous service on employer's election

(1) The employer of a transitional employee may elect to pay to the Board an amount for the recognition of the employee's previous service.

(2) The election must be in an approved form.

(3) After the Board has received the election, the Registrar must –

- (a) in accordance with the Determinations, decide the amount that the employer must pay for that recognition;
- (b) notify the employer of the decision and the time by which the amount must be paid; and
- (c) state in the notification –
 - (i) the reasons for the decision; and
 - (ii) that the employer is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.

(4) The employer must pay to the Board the amount at or before the time specified in the notification.

(5) The amount –

- (a) is a debt due to the Board from that time; and
- (b) may be sued for and recovered in any court of competent jurisdiction by the Board or by a person appointed by the Board to act on its behalf.

(6) After the amount is received by the Board –

- (a) the Board must recognise the previous service mentioned in subsection (1); and
- (b) the Registrar must –
 - (i) convert the previous service into an LSL credit for the employee in accordance with the Determinations; and

- (ii) credit the employee with the LSL credit.

96. Recognition of previous service on employee's application

- (1) This section applies if the employer of a transitional employee –
 - (a) has not made an election under section 95 for the recognition of the employee's previous service; or
 - (b) has made such an election but fails to pay all or part of the amount that the employer is required to pay for that recognition.

(2) The employee or the employee's personal representative may apply for long service leave or a long service benefit under section 18, 19, 21 or 22 (as the case may be) as if the previous service had been recognised and converted into an LSL credit under section 95.

(3) However, subsection (2) only applies if the employee's continuous service with the employer remains unbroken at the following time (the "relevant time"):

- (a) for an application under section 18 or 19 – the time of the application;
- (b) for an application under section 21 – immediately before the employee is last credited with any qualifying service, ceases to carry out construction work, retires or dies (as the case requires);
- (c) for an application under section 22 – immediately before the employee ceases to carry out construction work.

(4) If the Board is satisfied that the applicant would be entitled to make the application had the previous service been recognised and converted into an LSL credit under section 95 –

- (a) the Board must recognise the previous service;
- (b) the Registrar must –
 - (i) convert the previous service into the LSL credit in accordance with the Determinations; and
 - (ii) credit the employee with the LSL credit;
- (c) the recognition, conversion and crediting are taken to have occurred immediately before the relevant time; and
- (d) the Board must decide the application on the basis that the employee had the LSL credit at the relevant time.

- (5) In addition, the Registrar must –
 - (a) in accordance with the Determinations, decide the amount that the employer must pay for the recognition of the previous service, taking into account any amount that the employer has already paid under section 95 for the employee;
 - (b) notify the employer of the decision and the time by which the amount must be paid; and
 - (c) state in the notification –
 - (i) the reasons for the decision; and
 - (ii) that the employer is entitled to apply for a reconsideration or review in relation to the decision under Part 5, Division 4.
- (6) The employer must pay to the Board the amount at or before the time specified in the notification.
- (7) The amount –
 - (a) is a debt due to the Board from that time; and
 - (b) may be sued for and recovered in any court of competent jurisdiction by the Board or by a person appointed by the Board to act on its behalf.
- (8) To avoid doubt –
 - (a) subsection (2) has effect subject to section 4; and
 - (b) subsection (4) has effect whether or not the employer complies with subsection (6).

97. Recognition of qualifying service for *Long Service Leave Act*

- (1) This section applies to a registered employee who –
 - (a) has ceased to be a construction worker; and
 - (b) is employed by an employer for a continuous service that began before, and remains unbroken after, that cessation.
- (2) Subject to section 4, this Act does not prevent all or part of that continuous service from giving rise to an entitlement for the employee or another person under the *Long Service Leave Act*.

(3) If all or part of that continuous service has given rise to such an entitlement –

- (a) the employee or the other person (as the case may be) must inform the Registrar in writing about the entitlement; and
- (b) on receiving the information, the Registrar must –
 - (i) disregard any qualifying service credited to the employee under this Act that was based on so much of that continuous service as has given rise to the entitlement; and
 - (ii) adjust the employee's LSL credits in accordance with the Determinations.

(4) This section applies in relation to the employee whether or not the employee is a transitional employee.

98. Entitlements under *Long Service Leave Act*

(1) This Act does not affect any entitlement under the *Long Service Leave Act* in relation to an employee if –

- (a) that entitlement existed before the commencement day in relation to a period of continuous service for which the employee was employed;
- (b) that entitlement is –
 - (i) an entitlement for the employee to be granted long service leave; or
 - (ii) an entitlement for the employee or another person to be paid an amount in relation to the long service leave; and
- (c) that period of continuous service has not been recognised and converted into an LSL credit for the employee under section 95 or 96 of this Act.

(2) This section applies in relation to the employee whether or not the employee is a transitional employee.

99. Acquisition on just terms

If, but for this section, property is acquired under this Division otherwise than on just terms –

- (a) the person from whom the property is acquired is entitled to the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may determine the amount of compensation or make the orders it considers necessary to ensure the compensation is on just terms.

100. Offence

A person must not engage in an act (including an omission) with the intention of avoiding the person's obligations under this Division.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

Division 2 – Other transitional matters etc.

101. Recognition of pre-commencement service

(1) This section applies to a construction worker who is registered as an employee or as a contractor –

- (a) on the day on which the *Construction Industry Long Service Leave and Benefits Act 2004* commences; or
- (b) within 12 months after that day.

(2) In crediting the worker with qualifying service, the Registrar must take into account the worker's days of service in relation to the following periods:

- (a) the period that starts from and includes 1 January 2005 and ends immediately before the worker becomes a registered worker;
- (b) a period during which the worker is a registered worker.

(3) However, the Registrar must not take into account any days of service of the worker that relate to a period of service that gave rise to an entitlement mentioned in section 98(1) for that worker.

102. Regulations

(1) The Regulations may make provision, consistent with this Act, about –

- (a) any matters arising from the operation of this Part; or
- (b) any other transitional matters for the *Construction Industry Long Service Leave and Benefits Act 2004*.

(2) The Regulations may provide that a provision under subsection (1) takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as –

- (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
 - (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.
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