

Serial 127

Portable Long Service Leave (Community Services Sector) Bill 2024

Ms Uibo

A Bill for an Act to establish a scheme for the portability of long service leave in the community services sector, to provide for the ability to extend the scheme to employees in other sectors and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

PORTABLE LONG SERVICE LEAVE ACT 2024

Act No. [] of 2024

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2024

An Act to establish a scheme for the portability of long service leave in the community services sector, to provide for the ability to extend the scheme to employees in other sectors and for related purposes

[Assented to [] 2024]
[Introduced [] 2024]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Portable Long Service Leave (Community Services Sector) Act 2024*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 16 March 2026, it commences on that day.

3 Object of Act

The object of this Act is to provide for long service leave entitlements to be available to employees in the community services sector and, if so provided under this Act over time, other sectors, by establishing a scheme that provides for:

- (a) continuity of service for employees who move between employers in the relevant sector; and

- (b) a board to be established for each sector to undertake responsibility for the administration of the long service leave scheme for that sector; and
- (c) the collection of a levy from employers in each sector to fund the long service leave entitlements of employees in the sector; and
- (d) intergovernmental agreements for the benefit of employees in a sector who move between the Territory and another Territory or a State.

4 Interpretation

- (1) In this Act:

affected person, see section 77(2).

approved form means a form approved under section 92.

authorised officer means a person appointed as an authorised officer under section 70.

break of continuity, see section 48.

Chairperson means the Chairperson appointed under section 14(2)(a).

community services are services of a type:

- (a) specified in Schedule 2; or
- (b) prescribed by regulation to be community services.

community services sector means the area of activity within the community that involves the provision of community services.

Community Services Sector Long Service Leave Board, see Schedule 1, clause 1.

completed year of service, see section 50(2).

corresponding authority means an entity that is responsible for the day to day administration of a corresponding law (to the extent that it relates to designated work).

corresponding law means a law of another Territory, or of a State, prescribed by regulation to be a corresponding law for section 81(a).

defined weekly payment benchmark, means an amount fixed under section 47.

Deputy Registrar means a Deputy Registrar appointed under section 22.

designated employee means an employee as defined in section 5 and includes a former employee.

designated sector means a sector in relation to which an industry board is established.

designated work means work to:

- (a) provide:
 - (i) community services; or
 - (ii) support to the provision of community services; or
- (b) provide other work specified in a Schedule.

employee, see section 5.

employer, see section 6.

employment percentage, see section 46.

industry board means a board established under Schedule 1.

industry levy rate means a rate fixed under section 59.

long service leave benefit means a payment made by an industry board under section 53, 54 or 55.

long service leave entitlement means an entitlement to long service leave or payment in lieu of long service leave.

paid leave means leave of a kind prescribed by regulation to be paid leave.

provider of labour hire services, see section 4B of the *Return to Work Act 1986*.

qualifying service period, see section 49(1).

quarter means a period of 3 months commencing on any of the following:

- (a) 1 January;

- (b) 1 April;
- (c) 1 July;
- (d) 1 October.

reciprocal agreement means an agreement entered into by the Minister under section 80(1).

reciprocating jurisdiction means another Territory, or a State, prescribed by regulation to be a reciprocating jurisdiction for section 81(b).

registered employee means a person registered as an employee under section 34.

registered employer means a person registered as an employer under section 38.

register of designated employees, see section 34.

register of designated employers, see section 38.

Registrar means a Registrar appointed under section 21.

registration day, in relation to a designated employee, means the day recorded on the relevant register of designated employees as the designated employee's registration day under section 35(1)(c).

relevant date means the day on which long service leave is commenced or an entitlement in lieu of long service leave arises.

relevant designated sector, see section 7(a).

relevant industry board means:

- (a) in relation to a designated employee – the industry board for the designated sector that applies to the employee in the particular circumstances; or
- (b) in relation to an employer in a designated sector – the industry board for the designated sector.

reviewable decision, see section 77(1).

rules means the rules made by an industry board under section 12(1).

special qualifying service period, see section 49(2).

unpaid leave means leave of a kind prescribed by regulation to be unpaid leave.

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

- (2) For this Act, a reference to the designated sector of an industry board is a reference to the designated sector in relation to which the board is established.

5 Meaning of *employee*

- (1) An **employee** is an individual who is:
- (a) employed to perform designated work; or
 - (b) performing designated work for an employer as an apprentice.
- (2) Despite subsection (1), an **employee** does not include an individual who is a member of a class of individuals prescribed by regulation not to be an employee.

6 Meaning of *employer*

- (1) Each of the following entities is an **employer**:
- (a) an entity that employs an employee;
 - (b) a provider of labour hire services that supplies an entity mentioned in paragraph (a) with an individual to perform designated work;
 - (c) an entity prescribed by regulation to be an employer.
- (2) Despite subsection (1), an **employer** does not include:
- (a) the Commonwealth; or
 - (b) the Territory; or
 - (c) a local government council; or
 - (d) an entity prescribed by regulation not to be an employer.

7 Act applies according to particular sector

This Act:

- (a) applies to a designated employee in respect of service in a particular designated sector at a particular time or in a particular circumstance or case (the **relevant designated sector**); and
- (b) to the extent that a designated employee may work, or may have worked, in more than one designated sector, applies to the employment of the designated employee in one designated sector in a separate and distinct manner to the employment of the designated employee in another designated sector.

8 Act binds Crown

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

9 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 9

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Industry boards

Division 1 Corporate provisions, functions and powers

10 Key features of industry boards

- (1) An industry board:
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) is capable, in its corporate name, of:
 - (i) acquiring, holding and disposing of real, leasehold and personal property; and

(ii) suing and being sued.

(2) All courts, judges and persons acting judicially must take judicial notice of the common seal of an industry board affixed to a document and must presume that it was duly affixed.

11 Functions and powers of industry boards

(1) An industry board has the following functions:

(a) to administer the portable long service leave scheme as it applies to members of the designated sector in relation to which it is established;

(b) to advise and make recommendations to the Minister about:

(i) issues affecting the provision of long service leave in the sector in relation to which it is established; and

(ii) the operation of this Act as it applies to the sector in relation to which it is established;

(c) to carry out any other function assigned to the board under this or any other Act.

(2) An industry board has the powers necessary to perform its functions.

12 Industry boards may make rules

(1) An industry board may, consistent with this Act, make rules:

(a) specifying or providing for matters mentioned in this Act as being the subject of the rules; or

(b) providing for matters necessary or convenient for carrying out or giving effect to this Act as it relates to the sector in relation to which it is established.

(2) Without limiting subsection (1), the rules of an industry board may set out principles or matters to be taken into account in determining whether particular work constitutes designated work in the sector in relation to which the board is established.

(3) Section 57 of the *Interpretation Act 1978* does not apply to the rules of an industry board.

13 Industry boards to act reasonably and advance object of Act

An industry 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.

Division 2 Membership of industry boards

14 Constitution of industry board

- (1) An industry board consists of at least 5 but not more than 7 members appointed by the Minister.
- (2) The Minister must appoint the following 5 industry board members:
 - (a) the Chairperson;
 - (b) 4 other members.
- (3) The Minister may appoint up to 2 additional industry board members.
- (4) The Minister may appoint a person to be an industry board member under subsection (2) or (3) only if the Minister is satisfied that the person holds suitable qualifications, or has suitable knowledge or experience, relating to the functions of the board.
- (5) The Minister must appoint:
 - (a) one member of an industry board who is a suitable person to represent the interests of employers in the sector in relation to which the board is established; and
 - (b) one member of an industry board who is a suitable person to represent the interests of employees in the sector in relation to which the board is established.
- (6) Not more than 2 members of an industry board may be public sector employees.
- (7) A member of an industry board holds office for the period (not exceeding 5 years) specified in the appointment and is eligible for reappointment.

15 Acting appointment

- (1) The Minister may appoint a person to act as a member of an industry board if a member of the board is absent or otherwise unable to perform the functions of the member.
- (2) The person appointed to act as a member of the industry board must be a person who could otherwise be appointed to the board under section 14.

16 Vacation of office

A member of an industry board vacates the member's office if:

- (a) the term of office expires; or
- (b) the member resigns by written notice given to the Minister; or
- (c) the Minister terminates the member's appointment.

17 Termination of appointment

- (1) The Minister may terminate the appointment of a member of an industry board on any of the following grounds:
 - (a) inability to perform core functions as a member;
 - (b) misbehaviour;
 - (c) physical or mental incapacity;
 - (d) failure to disclose an interest under section 18.
- (2) The Minister must terminate the appointment of a member of an industry board if the member:
 - (a) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the board; or
 - (b) 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; or
 - (c) is convicted in Australia of an offence punishable by imprisonment for 12 months or longer.

18 Disclosure of interest

- (1) This section applies if a member of an industry board has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the board.
- (2) The member must, as soon as possible after the relevant facts come to the attention of the member, disclose the nature of the interest:
 - (a) for a member who is not the Chairperson – to the Chairperson; and
 - (b) for the Chairperson – to the Minister.
- (3) The member who makes the disclosure:
 - (a) must not take part in any deliberation or decision of the industry board in relation to the matter that occurs after the member makes the disclosure; and
 - (b) must be disregarded for the purpose of constituting a quorum of the industry board while the matter is deliberated and the board's decision about the matter is made.
- (4) The Minister may make and publish guidelines specifying the types of interests that a member of an industry board must disclose under this section.

19 Validity of acts

A decision of an industry board is not invalidated by a vacancy in the membership of the board or a defect in the appointment of a person as a member of the board.

Division 3 Procedure

20 Industry board meetings

- (1) An industry board must meet as often as is necessary for the performance of its functions and the exercise of its powers.
- (2) The Chairperson of an industry board must make the arrangements that enable the board to meet.
- (3) At a meeting, 4 members of the industry board constitute a quorum.
- (4) An industry board must keep accurate minutes of board meetings.
- (5) The Chairperson is the presiding member of an industry board.

- (6) If the Chairperson is absent from a meeting of an industry board, the members present at the meeting must elect one of those members to be the presiding member.
- (7) At a meeting of an industry board, the presiding member:
 - (a) has a deliberative vote; and
 - (b) in the event of an equality of votes, also has a casting vote.

Division 4 Registrar, Deputy Registrar and staff

21 Registrar

- (1) An industry board must appoint a person to be the Registrar of the board.
- (2) A Registrar:
 - (a) must be a person who is a public sector employee; and
 - (b) may be:
 - (i) the Registrar of another industry board; or
 - (ii) the Registrar under the *Construction Industry Long Service Leave and Benefits Act 2005*.
- (3) A person may only be appointed as a Registrar with the agreement of the Chief Executive Officer of the Agency in which the person is employed.
- (4) Subject to any decision, rule or policy of an industry board, the Registrar of the board is responsible to the board for:
 - (a) managing the board's business efficiently and effectively; and
 - (b) supervising the staff engaged in the work of the board.

22 Deputy Registrar

- (1) An industry board may appoint a Deputy Registrar of the board.
- (2) A Deputy Registrar must be a person who is a public sector employee.
- (3) A person may only be appointed as a Deputy Registrar with the agreement of the Chief Executive Officer of the Agency in which the person is employed.

- (4) The Deputy Registrar of an industry board has the powers and functions of the Registrar of the board but is subject to direction by the Registrar of the board.

23 Staffing arrangements

- (1) The staffing arrangements for an industry board are to be determined by the board after consultation with the Commissioner for Public Employment.
- (2) A staffing arrangement under subsection (1) may provide for one or more of the following:
- (a) the industry board engaging staff as employees or contractors of the board;
 - (b) the industry board being assisted by one or more persons who are:
 - (i) public sector employees; and
 - (ii) made available to the board with the agreement of the Commissioner for Public Employment;
 - (c) the industry board being assisted by the staff of:
 - (i) another industry board; or
 - (ii) the board established under section 53 of the *Construction Industry Long Service Leave and Benefits Act 2005* and known as NT Build.

Division 5 Financial matters

24 Industry fund

- (1) An industry board must establish a fund (an ***industry fund***) for the purposes of this Act.
- (2) The money of an industry board must be held in its industry fund.
- (3) An industry board may, with the approval of the Treasurer, invest money held in its industry fund.
- (4) The regulations may deal with other matters relevant to an industry fund.

25 Money of industry board

- (1) The money of an industry board consists of:
 - (a) amounts of the levy paid to the board; and
 - (b) proceeds from the investment of any of the board's money; and
 - (c) amounts paid to the board under reciprocal agreements; and
 - (d) any other amounts approved by the Treasurer.
- (2) The money of an industry board can only be applied for the following purposes:
 - (a) payment of long service leave benefits;
 - (b) expenses incurred by the board in performing its functions under this Act;
 - (c) investments approved by the Treasurer;
 - (d) payments to corresponding authorities under reciprocal agreements;
 - (e) other payments in relation to the administration of the long service leave scheme for the board's designated sector;
 - (f) any other payments approved by the Treasurer.

26 Account keeping and controls

- (1) An industry board must ensure that:
 - (a) proper accounts and records of the board's transactions and financial affairs are kept; and
 - (b) there are adequate controls over the incurring of the board's liabilities; and
 - (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 an industry 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 industry board must comply with the request.

27 Refund or additional payment

- (1) A person may give an industry board written notice in the approved form that the person considers that the person has overpaid an amount to the board or that the board has underpaid an amount to the person.
- (2) An industry board must pay to a person:
 - (a) any amount (including all or part of an amount of a levy) that the person has overpaid to the board; or
 - (b) any amount (including all or part of an amount of a long service leave benefit) that the board has underpaid to the person.
- (3) Despite subsection (2), the industry board may reduce the amount of the payment by any other amount that is payable by the person to the board.
- (4) The industry board must make the payment to the person as soon as practicable after the board becomes aware of the overpayment or underpayment and give the person written notice in accordance with the regulations of its decision about the amount of the payment to the person.
- (5) If, after receiving a notice under subsection (1) from a person, the board decides there is no payment to be made to the person, the board must give the person written notice of its decision in accordance with the regulations.

28 Treasurer's approval

- (1) An industry 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 an industry board may invest its money without the Treasurer's approval.

- (3) An industry 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.

Division 6 Related matters

29 Delegations

- (1) An industry board may delegate any of its powers or functions to:
- (a) a member of the board; or
 - (b) the Registrar, or Deputy Registrar, of the board; or
 - (c) a person engaged by or assisting the board under a staffing arrangement mentioned in section 23(2).
- (2) The Registrar of an industry board may delegate any of the Registrar's powers or functions to a person engaged by or assisting the board under a staffing arrangement mentioned in section 23(2).
- (3) The Deputy Registrar of an industry board may delegate any of the Deputy Registrar's powers or functions to a person engaged by or assisting the board under a staffing arrangement mentioned in section 23(2).
- (4) A delegation under this section must be in writing.

30 Provision of information to Minister

- (1) The Minister may request an industry board to provide the Minister with any information about its activities (including information about the board's financial position or financial affairs) as is specified by the request.
- (2) The industry board must comply with the request.

31 Direction by Minister

- (1) The Minister may give any direction to an industry board about the exercise of any of its powers or the performance of any of its functions.
- (2) The industry board must comply with the direction.

- (3) The Minister must table a copy of the direction in the Legislative Assembly within 6 sitting days after giving the direction.
- (4) The annual report of the industry board prepared under section 32 for a financial year must include a record of any direction given to the board under subsection (1) in that year.

32 Annual report

- (1) For each financial year, an industry 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 31; and
 - (b) financial statements relating to the industry board's operation for that year; and
 - (c) the Auditor-General's report on the financial statements that is provided to the industry board under section 33(3)(b).
- (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) An industry board must provide the Minister with its 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.

33 Industry board to provide Auditor-General with financial statements

- (1) An industry board must provide the Auditor-General with the financial statements that are to be included in the board's annual report for a financial year.
- (2) An industry 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 industry 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.

Part 3 Registration

Division 1 Registration of employees

34 Industry board to register employees

- (1) An industry board must keep a register of designated employees in its designated sector (a ***register of designated employees***).
- (2) The industry board may register a designated employee on the register of designated employees on account of:
 - (a) information provided to the board by an employer under this Act; or
 - (b) an application made to the board by the employee.
- (3) An application under subsection (2)(b) must:
 - (a) be made in the approved form; and
 - (b) include, or be accompanied by, any information required by the approved form.
- (4) An industry board may, by written notice, request an applicant to provide further information or documents relevant to the application.
- (5) Subject to subsection (4), the industry board must consider an application under subsection (2)(b) and decide to:
 - (a) grant the application; or
 - (b) refuse to grant the application.

- (6) If the industry board decides to grant the application, the board must:
 - (a) give the applicant written notice of its decision; and
 - (b) enter the applicant in the board's register of designated employees.
- (7) If the industry board refuses to grant the application, the board must give the applicant written notice of its decision in accordance with the regulations.

35 Information to be included in register

- (1) An industry board must enter the following information about a person who is registered in its register of designated employees:
 - (a) the person's name and date of birth;
 - (b) an address (which may be an email address) for the person;
 - (c) the day on which the person became an employee in the designated sector (the **registration day**);
 - (d) the period or periods of service of the person in the relevant designated sector;
 - (e) the amount of the person's entitlement to long service leave (determined at least once in every financial year);
 - (f) for a person who ceases to perform designated work in the designated sector, other than a person whose registration is cancelled under section 37 – the day the person ceased performing the work.
- (2) An industry board may also enter any other information in the register the board considers necessary or convenient for the administration of this Act.
- (3) For the purposes of subsection (1)(c), a person's registration day as an employee must not be earlier than the start of the financial year that is the second last full financial year before the relevant industry board first received:
 - (a) information from a registered employer in the relevant designated sector under Division 2 notifying the industry board that the person is an employee in the sector; or
 - (b) an application from the person under this Division to register the person as an employee in the relevant designated sector.

- (4) An industry board may determine that subsection (3) does not apply in a particular case because it is satisfied that special circumstances exist.

36 Employee may give notice of change to information

- (1) A registered employee may give notice to an industry board about any change to the information in the board's register of designated employees.
- (2) A notice under subsection (1) must be in the approved form.

37 Cancellation of registration

- (1) An industry board may cancel the registration of a person on its register of designated employees if the board is satisfied any of the following circumstances apply:
- (a) the person is not and has not been an employee in the relevant designated sector;
 - (b) the person has not, for at least 20 consecutive quarters, been credited with service in the register of designated employees or had service recorded under a corresponding law that relates to a corresponding area of activity within the community;
 - (c) the person's registration was based on information provided by the employee that was false or misleading;
 - (d) the person has died and the person's personal representative is not entitled to apply for a payment under section 54 or 55;
 - (e) the person has died and a payment has been made under section 54 or 55;
 - (f) a circumstance prescribed by regulation for this subsection applies to the person.
- (2) If an industry board is proposing to cancel a person's registration under subsection (1)(a), (b), (c) or (f), the board must give the person written notice stating:
- (a) that the board proposes to cancel the registration; and
 - (b) the reasons for the proposed cancellation; and
 - (c) that the person may, within 3 months after the notice is given, give the board a written response to the proposed cancellation.

- (3) An industry board must consider a person's response under subsection (2)(c) before deciding whether to cancel a person's registration under subsection (1)(a), (b), (c) or (f).
- (4) If an industry board cancels a person's registration, it must give the person, or the person's personal representative, a written notice for the decision.
- (5) When an industry board cancels a person's registration under this section:
 - (a) the industry board must enter on the register of designated employees that the person is not a registered employee; and
 - (b) subject to subsection (6), the person, or the person's personal representative, is not entitled to apply for or be paid a long service leave entitlement that relates to any period of service credited to the person in the register at the time of cancellation.
- (6) The industry board must pay an amount calculated under the rules of the board to a person whose registration has been cancelled if the person has attained a long service leave entitlement under section 51 in respect of service in the designated sector, being a payment in lieu of any long service leave entitlement that the person may possess at the time of cancellation.
- (7) Subsection (6) does not apply to the industry board in a circumstance prescribed by regulation for this subsection.
- (8) This section does not prevent a person from subsequently being reregistered if the person returns to working in the relevant designated sector.

Division 2 Registration of employers

38 Industry board to register employers

- (1) An industry board must keep a register of employers in its designated sector (a ***register of designated employers***).
- (2) The industry board may register an employer who employs one or more employers in its designated sector:
 - (a) on account of an application made to the board by the employer; or
 - (b) on the board's own initiative; or

- (3) If an industry board decides to register an employer on its own initiative, the board must give the employer written notice of its decision in accordance with the regulations.

39 Application for registration as registered employer

- (1) An employer who employs one or more employees must apply for registration on the register of designated employers for the relevant designated sector.

- (2) The application must:

- (a) be made in the approved form; and
- (b) include, or be accompanied by, information required by the approved form; and
- (c) be made within 28 days after the employer becomes an employer in the designated sector; and
- (d) be made to the industry board for the designated sector; and
- (e) be accompanied by the prescribed fee.

- (3) A person commits an offence if:

- (a) the person is an employer required to make an application under subsection (1); and
- (b) an application is not made in accordance with subsection (2).

Maximum penalty: 20 penalty units.

- (4) An industry board may, by written notice, require an applicant to do the following things within a reasonable time specified in the notice:

- (a) provide further information or documents relevant to the application;
- (b) verify information or documents forming part of the application, including by statutory declaration.

- (5) A person commits an offence if:

- (a) the person is required to do something under subsection (4); and
- (b) the person contravenes the requirement.

Maximum penalty: 20 penalty units.

- (6) An offence against subsection (3) or (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (3) or (5) if the defendant has a reasonable excuse.
- (8) If the industry board refuses to grant the application, the board must give the applicant written notice of its decision in accordance with the regulations.

40 Information to be entered in register

- (1) An industry board must enter the day on which an employer becomes registered as an employer by the board in its register of designated employers.
- (2) An industry board may also enter any other information in the register the board considers necessary or convenient for the administration of this Act.

41 Employer to give notice of change to information

- (1) A registered employer must give notice to an industry board about any change to the information given to the board by the employer for the purposes of, or in connection with, the registration of the employer within 28 days after the change happens.
- (2) A notice under subsection (1) must be in the approved form.
- (3) A person commits an offence if:
 - (a) the person is a registered employer required to give a notice under subsection (1); and
 - (b) the person contravenes the requirement.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

42 Industry board may require information or documents from employer before registering on own initiative

- (1) This section applies if an industry board believes that a person is or was an employer in its designated sector but the person is not registered on its register of designated employers.

- (2) The industry board may, by written notice given to the person, require the person to give the board, within a reasonable time specified in the notice, the information or documents specified in the notice that are necessary to enable the board to decide whether the person is or was an employer in its designated sector.
- (3) A person commits an offence if:
 - (a) the person is required to give an industry board information or documents under subsection (2); and
 - (b) the person contravenes the requirement.

Maximum penalty: 20 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

43 Cancellation of registration

- (1) A registered employer may, by notice in the approved form, apply to an industry board for the cancellation of the employer's registration in the register of designated employers if the registered employer ceases to engage employees in the board's designated sector.
- (2) The industry board must consider the application and decide to:
 - (a) grant the application and cancel the employer's registration; or
 - (b) refuse to grant the application.
- (3) If the industry board decides to grant the application, the board must:
 - (a) give the employer written notice of its decision; and
 - (b) enter in the board's register of designated employers that the employer is not a registered employer in its designated sector.
- (4) If the industry board refuses to grant the application, the board must give the employer written notice of its decision in accordance with the regulations.
- (5) Nothing in this section requires an industry board to remove information from a register that the board considers should be retained for the purposes of the administration of this Act.

Division 3 Related provisions

44 Form and amendment of registers

- (1) An industry board must keep its registers in the form the board considers appropriate, including electronically.
- (2) An industry board may amend a register at any time in order to ensure that the register is kept up to date.

45 Inspection of registers

- (1) An industry board must make its registers available for inspection.
- (2) Any person may:
 - (a) inspect a register of designated employers free of charge; and
 - (b) obtain a copy of an entry on the register on payment of the prescribed fee.
- (3) A designated employee, or a person acting on behalf of a designated employee or a personal representative of a designated employee, may:
 - (a) inspect an entry on a register of designated employees that relates to the designated employee free of charge; and
 - (b) obtain a copy of the entry on payment of the prescribed fee.

Part 4 Long service leave entitlements

Division 1 Preliminary matters

46 Employment percentages

- (1) An employee is to have an employment percentage in relation to a particular period in a designated sector ascertained by:
 - (a) averaging the number of hours worked in the sector per week in each completed year during the period; and
 - (b) aggregating the average hours worked per week for each year ascertained under paragraph (a); and
 - (c) dividing the number of hours aggregated under paragraph (b) by the number of completed years; and

- (d) expressing the number ascertained under paragraph (c) as a percentage of 38 hours.
- (2) For the purposes of ascertaining the number of hours worked:
 - (a) hours of paid leave are taken into account; and
 - (b) hours of unpaid leave are not taken into account.
- (3) Despite subsection (1)(d), an employee's employment percentage in relation to a particular period may not be more than 100%.

47 Defined weekly payment benchmark

- (1) An industry board must, in respect of each financial year, fix an amount that constitutes the defined weekly payment benchmark that applies in its designated sector during that year.
- (2) A defined weekly payment benchmark:
 - (a) must be based on the median weekly rate of pay for employees in the relevant designated sector determined by the industry board on the advice of the board's actuary appointed under section 69; and
 - (b) must be fixed before the beginning of the financial year to which it relates.
- (3) An industry board must ensure that a defined weekly payment benchmark fixed by the board is published on the Agency's website.

48 Meaning of *break of continuity*

- (1) An employee has a ***break of continuity*** if a matter arises, or a circumstance occurs, in relation to the employee that is a matter or circumstance prescribed by regulation as resulting in a break of continuity of service.
- (2) Despite subsection (1), an employee does not have a break of continuity of service merely because the employee takes unpaid leave.

Division 2 Entitlements

49 Qualifying service period

- (1) Subject to this Act, a person who has at least 10 completed years of service as an employee in a designated sector without a break of continuity (a **qualifying service period**) is entitled to a long service leave entitlement.
- (2) A person is also entitled to a long service leave entitlement if the person:
 - (a) has less than 10, but at least 7, completed years of service, as an employee in a designated sector without a break of continuity (a **special qualifying service period**); and
 - (b) either:
 - (i) dies; or
 - (ii) ceases to work as an employee in the sector in a special circumstance.
- (3) For subsection (2), a person ceases to work as an employee in a special circumstance if the person ceases to work as an employee:
 - (a) on or after attaining the age at which the person may retire; or
 - (b) on the termination of employment by an employer for a reason other than serious misconduct; or
 - (c) on account of illness, incapacity or domestic or other pressing necessity of a nature that justifies ceasing to be an employee.
- (4) In this section:

serious misconduct, see section 12 of the *Fair Work Act 2009* (Cth).

50 Completed years of service

- (1) A long service leave entitlement only arises in respect of a completed year of service in a particular designated sector.
- (2) A person is taken to have a **completed year of service** in a designated sector if, during a period of 12 months determined from the person's registration day, or an anniversary of the person's registration day, the person has worked as an employee in the sector without a break of continuity.

51 Long service leave entitlement

- (1) The long service leave entitlement for a person who has attained a qualifying service period for at least 10 completed years of service is:
 - (a) in respect of the first 10 completed years of service without a break of continuity – 13 weeks of leave; and
 - (b) in respect of each subsequent completed year of service without a break of continuity – 1.3 weeks of leave.
- (2) A person may, instead of taking long service leave in respect of a long service leave entitlement under subsection (1), take all or part of the entitlement as a payment in lieu of long service leave.
- (3) If long service leave is taken by a person or a payment in lieu of long service leave is made to a person in respect of a long service leave entitlement under subsection (1), the person's entitlement is reduced accordingly.
- (4) The long service leave entitlement for a person who has attained a special qualifying service period for less than 10, but at least 7, completed years of service and who has died or ceased to work as an employee in the sector in a special circumstance mentioned in section 49(3) is:
 - (a) in respect of the first 7 completed years of service without a break of continuity – 9.1 weeks of leave; and
 - (b) in respect of each subsequent completed year of service without a break of continuity – 1.3 weeks of leave.
- (5) A person must, in respect of a long service leave entitlement under subsection (4), take a payment in lieu of long service leave.

52 Taking long service leave

- (1) The employer in the relevant designated sector by whom a person is employed when the person's long service leave entitlement arises must grant long service leave to the person if the person applies to the employer to take the leave.
- (2) After a person's long service leave entitlement arises, a subsequent employer in the relevant designated sector by whom the person is employed must grant long service leave to the person if the person applies to the subsequent employer to take the leave.

- (3) Long service leave must be granted as soon as practicable after the person applies to take leave but:
 - (a) the commencement of long service leave must take into account the reasonable needs of the employer; and
 - (b) the employer and the person may agree that the person take leave in separate periods each of which is at least 1 week in duration.

53 Payments for long service leave

- (1) The industry board for a designated sector is responsible for making a payment to an employee in the sector:
 - (a) for long service leave taken by the employee under this Act; or
 - (b) in lieu of the employee taking long service leave.

- (2) The amount of the payment is calculated using the following formula:

$$A = NW \times DWPB \times EEP$$

where:

A is the amount payable.

NW is the number of weeks of long service leave that is relevant to the payment (expressed in weeks to one decimal place rounded, if necessary, in accordance with the regulations).

DWPB is the defined weekly payment benchmark at the relevant date.

EEP is the employee's employment percentage at the end of the relevant period.

- (3) For subsection (2), the relevant period ends at the end of the last completed year of service before the relevant date.
- (4) An application for a payment under this section must:
 - (a) be made by the employee to the relevant industry board in the approved form; and
 - (b) include, or be accompanied by, any information required by the approved form.

- (5) The relevant industry board must give the applicant written notice in accordance with the regulations of its decision refusing payment or making payment of a particular amount under this section.

54 Payments for long service leave if employment ends

- (1) This section applies if an industry board is satisfied that:
- (a) a person has attained a long service leave entitlement under section 51(1) in respect of at least 10 completed years of service in a designated sector without a break of continuity, even if that entitlement has been reduced because of long service leave being taken by the person or a payment made in lieu of long service leave; and
 - (b) the person has:
 - (i) died; or
 - (ii) ceased to work as an employee in the designated sector because of a physical or mental disability that will prevent the person from working in the sector for a continuous period of 12 months or more; or
 - (iii) ceased to work in the designated sector and will not be working in the sector for a continuous period of 12 months or more (from the time that the person ceased to work as an employee in the sector).
- (2) This section also applies if an industry board is satisfied that a person has attained a long service leave entitlement under section 51(4) in respect of less than 10, but at least 7, completed years of service in a designated sector without a break of continuity.
- (3) The industry board must, on application under this section by a person, or, if a person has died, the person's personal representative, pay the person, or the person's personal representative, an amount calculated using the following formula:

$$A = LSLE \times DWPB \times EEP$$

where:

A is the amount payable.

LSLE is the outstanding long service leave entitlement at the time the industry board processes the application (expressed in weeks to one decimal place rounded, if necessary, in accordance with the regulations).

DWPB is the defined weekly payment benchmark at the relevant date.

EEP is the person's employment percentage at the end of the last completed year of service before the person died or ceased to work as an employee in the designated sector.

- (4) An application for a payment under this section must:
 - (a) be made to the relevant industry board in the approved form; and
 - (b) include, or be accompanied by, any information required by the approved form.
- (5) The relevant industry board must give the applicant written notice in accordance with the regulations of its decision refusing payment or making payment of a particular amount under this section.

55 Payments for long service leave if service elsewhere

- (1) A person may apply to the relevant industry board for payment for long service leave calculated in a way stated in a corresponding law of a reciprocating jurisdiction if:
 - (a) the person:
 - (i) has, for a period, been employed in designated work in the reciprocating jurisdiction, or partly in the reciprocating jurisdiction and partly in the Northern Territory; and
 - (ii) because of the length of the period, is entitled under the corresponding law to a payment for long service leave; and
 - (b) the person would, if the person had been employed in the work in the Northern Territory for the entire period, have had a long service leave entitlement under this Act.
- (2) If a person has died and, immediately before the person's death, the person was entitled to apply for payment for an entitlement under subsection (1), the person's personal representative may apply to the relevant industry board for the payment.

- (3) An industry board must pay the applicant the amount of the entitlement calculated in the way stated in the corresponding law if the industry board is:
 - (a) satisfied the applicant is entitled under the corresponding law and this Act to the payment; and
 - (b) authorised by the corresponding authority to make the payment.
- (4) If an industry board makes a payment under subsection (3), the board must take reasonable steps to ensure it is reimbursed by the corresponding authority for the payment to the extent provided in an agreement entered into under section 80 for the reciprocating jurisdiction in which the corresponding authority is established.
- (5) An application for a payment under this section must:
 - (a) be made to the relevant industry board in the approved form; and
 - (b) include, or be accompanied by, any information required by the approved form.
- (6) The relevant industry board must give the applicant written notice in accordance with the regulations of its decision refusing payment or making payment of a particular amount under this section.

56 Entitlement if corresponding authority pays

- (1) If, under a corresponding law, a corresponding authority pays a person an amount that, but for the payment, could have been payable for a long service leave entitlement under this Act:
 - (a) the obligation of the relevant industry board to make the payment to the person for the entitlement is discharged; and
 - (b) if the board is notified about the payment and is satisfied that the payment was properly made – the board must reimburse the corresponding authority to the extent provided in an agreement entered into under section 80 for the reciprocating jurisdiction in which the corresponding authority is established.
- (2) The payment of an amount under subsection (1)(b) must be made in the way stated in the agreement referred to in that subsection.

Division 3 Information system

57 Information system to be established

An industry board for a designated sector must establish a system to allow registered employees and registered employers in the sector to obtain information from the board about a matter mentioned in this Part that affects them.

Part 5 Levies, returns and records

Division 1 Levies and returns

58 Imposition of levies

- (1) An employer in a designated sector is required to pay a levy to the relevant industry board under this section.
- (2) Subject to this section, the levy payable by an employer is the industry levy rate of the total remuneration paid to each of the employer's employees in the designated sector during the period to which the levy relates.
- (3) The regulations may:
 - (a) prescribe:
 - (i) payments made to or for the benefit of an employee that will be taken as constituting remuneration for the purposes of this section; and
 - (ii) payments made to or for the benefit of an employee that will not be taken as constituting remuneration for the purposes of this section; and
 - (b) prescribe classes of employees in relation to whom a levy is not payable.
- (4) If an employer pays an employee in the designated sector at a rate that exceeds the defined weekly payment benchmark that applies in its designated sector during the period to which the levy relates, the amount of the excess may be disregarded for the purpose of calculating the remuneration paid by the employer.

59 Industry levy rate

- (1) An industry board must, for each financial year, fix a rate that is to be applied as the industry levy rate under this Act.

- (2) The industry board must:
 - (a) fix the rate before the beginning of the financial year to which it relates; and
 - (b) ensure that the rate is published on the Agency's website and in the *Gazette*.
- (3) The rate fixed by an industry board must be based on actuarial advice received by the board under Part 6.

60 Returns by employers

- (1) Every employer in a designated sector must, within 28 days after the end of each quarter, provide the relevant industry board with a return in the approved form containing such information as may be prescribed by regulation or required by the approved form.
- (2) The return must be provided in the manner prescribed by regulation.
- (3) An industry board may require an employer to provide:
 - (a) a certificate signed by the employer, or a person acting on the employer's behalf, verifying the information contained in a return; or
 - (b) some other verification of a kind stipulated by the board.
- (4) An industry board may:
 - (a) determine that a requirement under this section will not apply to a particular employer or employers of a particular class; and
 - (b) impose, by notice to the particular employer or by notice published on the Agency's website, such other requirements on the employer or employers as may be appropriate in the circumstances.
- (5) A registered employer who does not employ any employees in the relevant designated sector in a particular quarter will nevertheless be taken to be an employer in the industry sector for the purposes of this section.

61 Payment of levy

- (1) An employer in a designated sector must pay a levy required under this Division to the industry board for that designated sector within 14 days after a return is required under section 60.

- (2) The levy must be paid in the manner prescribed by regulation.
- (3) An industry board may grant an employer, or employers of a particular class, an extension to the time to pay a levy.
- (4) An extension under subsection (3) may be granted on conditions specified by the industry board.

62 Use of estimates

- (1) An industry board may make an assessment of the levy payable on the basis of estimates made by the board if:
 - (a) an employer fails or neglects to:
 - (i) provide a return to the board when required by or under this Act; or
 - (ii) pay a levy to the board when required by or under this Act; or
 - (b) the board has reasonable grounds to believe that an employer has provided a return to the board that is defective in any respect.
- (2) An industry board must, as soon as is reasonably practicable after making an assessment under subsection (1), give written notice of the assessment to the employer to whom the assessment relates.
- (3) An employer to whom a notice of assessment is given under this section must pay the amount of the assessment within 14 days, or within the longer period specified by the notice.
- (4) The amount of an assessment under this section constitutes a levy payable under this Act.

63 Interest on levy

- (1) If an employer fails to pay a levy as and when required by or under this Act, the amount of levy in arrears is subject to compound interest at the rate prescribed by regulation.
- (2) Interest forms part of, and may be recovered as, an unpaid levy.
- (3) An industry board may for any proper reason remit interest imposed under this section wholly or in part.

64 Recovery of levies

A levy payable under this Act (and any interest) is a debt due to the relevant industry board and may be recovered by the board in a court of competent jurisdiction.

65 Offences relating to returns and levies

- (1) A person commits an offence if:
- (a) the person is required to provide a return to an industry board under this Division; and
 - (b) the person contravenes the requirement.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person is required to pay a levy to an industry board under this Division; and
 - (b) the person contravenes the requirement.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

Division 2 Records

66 Employer to keep record for each employee

- (1) An employer who employs an employee in a designated sector must keep a record of the following information about the employee:
- (a) the employee's name and date of birth;
 - (b) the employee's residential address;
 - (c) if known to the employer, the employee's registration number for the register of designated employees in the relevant designated sector;
 - (d) the day on which the employee commenced working with the employer in the relevant designated sector;

- (e) the number of hours in each week the employee works for the employer in the relevant designated sector;
- (f) details of long service leave granted by the employer to, or taken by, the employee;
- (g) if the employee is no longer engaged by the employer to perform work in the relevant designated sector – the day on which the employee ceased to be so engaged by the employer;
- (h) other information specified by the rules of the industry board for the designated sector.

(2) A person commits an offence if:

- (a) the person is an employer required to keep a record under subsection (1); and
- (b) the person fails to keep the record.

Maximum penalty: 20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

(5) A person commits an offence if:

- (a) the person is an employer required to keep a record under subsection (1); and
- (b) the person keeps or purportedly keeps a record that is false or misleading in a material particular (whether by reason of the inclusion or an omission of any particular).

Maximum penalty: 50 penalty units.

67 Retention of records

(1) A record under section 66 must be kept for at least 6 years after the last entry is made in it.

(2) A person commits an offence if:

- (a) the person is required to keep a record under subsection (1); and

- (b) the person fails to keep the record in accordance with that requirement.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

Part 6 Actuarial advice

68 Actuarial investigation of funds

- (1) At least every 2 years, but otherwise as required by the Minister, an industry board must investigate the adequacy of:
 - (a) the board's funds; and
 - (b) the industry levy rate for the designated sector.
- (2) For subsection (1), the industry board must appoint a person (an **actuary**) who is recognised as an actuary and is appropriately qualified to carry out the investigation.
- (3) The actuary must:
 - (a) conduct the investigation and report the outcome of the investigation to the industry board after the investigation is completed; and
 - (b) state in the report an opinion about whether the industry levy rate for the relevant designated sector should be reduced, increased or not altered.
- (4) As soon as practicable after the industry board receives the report, the industry board must give the report to the Minister with the board's recommendations on:
 - (a) the actuary's stated opinion; and
 - (b) whether the funds available to the board are adequate to perform the board's functions.
- (5) The industry board must also include with the report an indication as to whether the board intends to reduce, increase or not alter, the industry levy rate for the relevant designated sector.
- (6) This section does not limit the operation of section 69.

69 Board's actuary

- (1) An industry board must appoint an actuary (the **board's actuary**) to provide advice about:
 - (a) the amount of the defined weekly payment benchmark for each financial year under section 47; and
 - (b) measures to achieve or maintain the adequacy of its financial resources; and
 - (c) the management of the long service leave scheme for its designated sector, especially taking into account relevant prudential frameworks.
- (2) The board's actuary may be (but does not need to be) the actuary appointed under section 68(2).
- (3) This section does not limit the ability of an industry board to obtain advice on any other matter from an actuary.

Part 7 Inspection and enforcement

Division 1 Appointment of authorised officers

70 Appointment

- (1) A Registrar of an industry board may appoint a person to be an authorised officer in relation to the designated sector of the board.
- (2) A person appointed as an authorised officer must be a public sector employee.
- (3) A person may only be appointed as an authorised officer with the agreement of the Chief Executive Officer of the Agency in which the person is employed.
- (4) An appointment may be made subject to such conditions or limitations as the Registrar thinks appropriate or as may be prescribed by regulation.
- (5) The person holding the office of a Registrar, or Deputy Registrar, of an industry board is, while the person holds that office, taken to be appointed as an authorised officer in relation to the designated sector of the board.

71 Identity card

- (1) A Registrar of an industry board must give an authorised officer an identity card stating the person's name and that the person is an authorised officer in relation to the designated sector of the board.
- (2) The identity card must:
 - (a) display a recent photograph of the authorised officer; and
 - (b) state the card's date of issue; and
 - (c) be signed by the officer.
- (3) This section does not prevent the issue of a single identity card to a person:
 - (a) in relation to the designated sector of more than one industry board; or
 - (b) for this and another Act.

72 Return of identity card

- (1) A person commits an offence if the person:
 - (a) ceases to be an authorised officer in relation to the designated sector of an industry board; and
 - (b) fails to return the person's identity card to the Registrar of the board within 15 business days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

Division 2 Functions and general powers

73 Functions and powers

- (1) An authorised officer has the following functions in relation to the designated sector for which the officer has been appointed:
 - (a) to provide information and advice about compliance with this Act;

- (b) to monitor compliance with this Act and to take action to require or secure compliance with this Act through the exercise of powers under this Act;
 - (c) to investigate contraventions of this Act and assist in the prosecution of offences;
 - (d) to do anything else necessary or required for the administration, operation or enforcement of this Act, including gathering information.
- (2) An authorised officer has the powers necessary to perform the officer's functions under this Act.
- (3) An authorised officer must, on request, produce the officer's identity card before exercising the powers of an officer under this Act in relation to a person or entering land or premises on a particular occasion.
- (4) This section does not limit a power or function of an authorised officer under another provision of this Act.

74 Powers to enter premises etc.

- (1) An authorised officer may, without warrant, enter during business hours any business premises of:
- (a) an employer in the relevant designated sector; or
 - (b) a person suspected on reasonable grounds of being an employer in the relevant designated sector.
- (2) On entering the premises, an authorised officer may do any of the following:
- (a) inspect or examine the premises and anything on the premises;
 - (b) make inquiries of a person present on the premises;
 - (c) search the premises and anything found there;
 - (d) inspect any operations or activities conducted on the premises;
 - (e) take photographs and make sketches or other records;
 - (f) make recordings in any medium, including audio, visual and audio-visual recordings;
 - (g) operate or test any equipment;

- (h) examine or test any infrastructure or other thing.
- (3) An authorised officer may do any of the following:
- (a) require a person on premises entered under subsection (1) to give the authorised officer reasonable assistance to perform or exercise the authorised officer's functions or powers including:
 - (i) to operate any computer or other equipment; and
 - (ii) to provide any access or assistance to access any computer or other equipment or any service;
 - (b) require a person to produce any document that may be relevant to activities in the relevant designated sector, or a copy of such a document, for inspection;
 - (c) inspect and take copies of a document;
 - (d) require a person to provide the person's name, address and date of birth and evidence of these if:
 - (i) the person is on, or in the vicinity of, premises that may be inspected under this section; or
 - (ii) the authorised officer suspects on reasonable grounds that the person is the owner or occupier of any such premises; or
 - (iii) the authorised officer suspects on reasonable grounds that the person is under investigation for a suspected contravention of this Act;
 - (e) require a person at the premises to answer reasonable questions related to an inspection of the premises;
 - (f) authorise a person to provide assistance to an authorised officer in the performance or exercise of the authorised officer's functions or powers;
 - (g) do any other act or thing necessary for, or incidental to, the exercise of a power mentioned in this section.

- (4) Without limiting any other power, if an authorised officer is satisfied that there are reasonable grounds for suspecting that an offence against this Act was, is being or is about to be committed, the authorised officer may (without warrant), and with the assistance the authorised officer thinks necessary:
- (a) seize or secure any thing the authorised officer believes, on reasonable grounds, was, is being or is about to be used in connection with the commission of the offence; and
 - (b) take any other action reasonably necessary to prevent the commission of an offence against this Act.

(5) An entry may be made under subsection (1) with, or without, the consent of the owner or occupier of the premises.

(6) An authorised officer may use reasonable force in exercising a power under subsection (1), (2) or (4).

(7) In this section:

business premises does not include any part of the premises used exclusively for residential purposes.

premises includes land on which the premises are located.

75 Offence to contravene requirement

(1) A person commits an offence if the person is required to do something under section 74(3) and the person contravenes the requirement.

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

76 Obstruction of authorised officer

(1) A person commits an offence if:

- (a) the person intentionally obstructs another person; and
- (b) the other person is an authorised officer; and

- (c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1)(b).
- (3) In this section:

acting in an official capacity, in relation to an authorised officer, means the authorised officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

obstructs includes hinders or resists.

Part 8 Reconsideration and review of reviewable decisions

77 Meaning of *reviewable decision* and *affected person*

- (1) A ***reviewable decision*** is a decision specified in Schedule 3, column 2.
- (2) An ***affected person***, for a reviewable decision, is a person specified in Schedule 3, column 3 for the decision.

78 Reconsideration by industry board

- (1) An affected person, for a reviewable decision of an industry board, may apply to the board for its reconsideration of the decision.
- (2) The application must be made:
- (a) in the approved form; and
- (b) within 28 days after the notice for the reviewable decision is given to the affected person or within any longer period allowed by the industry board.
- (3) The application does not affect the operation or implementation of the reviewable decision.
- (4) Despite subsection (3), the industry board may make another decision staying or otherwise affecting the operation or implementation of so much of the reviewable decision as the board considers appropriate in order to allow it to effectively decide the application.

- (5) The other decision:
 - (a) is subject to the conditions specified in it; and
 - (b) has effect:
 - (i) for the period specified by the industry board; or
 - (ii) if no period is specified by the board – until the application is decided.
- (6) On receiving an application made in accordance with this section, the industry board:
 - (a) may reconsider the reviewable decision as it considers appropriate; and
 - (b) must decide the application by confirming, varying or revoking the decision.
- (7) The industry board is taken to have reconsidered the reviewable decision and decided the application by confirming the reviewable decision if the board fails to give the applicant a notice of its decision on an application made in accordance with this section within 30 days after it receives the application.

79 Review by NTCAT

- (1) NTCAT has jurisdiction to review a reviewable decision of an industry board if the board has reconsidered the decision under section 78.
- (2) An affected person for a reviewable decision of an industry board that has been reconsidered by the board under section 78 may apply to NTCAT for review of the decision.

Note for section 79

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.

Part 9 Arrangements with other jurisdictions

80 Reciprocal arrangements with other Territories and States

- (1) The Minister may enter into an agreement about reciprocal arrangements relating to:
 - (a) long service leave entitlements for employees performing designated work in another Territory or a State; and

- (b) payments associated with those entitlements; and
 - (c) the exchange of information about entitlements and payments; and
 - (d) other incidental or related matters.
- (2) The agreement may be amended or repealed by a subsequent agreement.

81 Regulations about arrangements with other jurisdictions

The regulations may prescribe:

- (a) a law of another Territory, or of a State, to be a corresponding law for this Act; and
- (b) another Territory, or a State, for which an agreement under section 80 is in force to be a reciprocating jurisdiction.

Part 10 Miscellaneous

82 Benefits under other laws – election

- (1) This section applies if a designated employee:
- (a) has accrued a long service leave entitlement under this Act; and
 - (b) is eligible for long service leave entitlements or benefits under one or more of the following laws:
 - (i) the *Long Service Leave Act 1981*;
 - (ii) a corresponding law;
 - (iii) a law prescribed by regulation; and
 - (c) elects to take a long service leave entitlement or benefit under a law mentioned in subsection (1)(b).
- (2) The designated employee must, in the approved form given to the relevant industry board:
- (a) nominate the law under which the designated employee elects to take the long service leave entitlement or benefit; and
 - (b) specify the period of service in relation to which the election is made.

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- (3) An industry board must, on receipt of a notice under subsection (2), adjust the designated employee's entitlement under this Act in accordance with principles prescribed by regulation.
 - (4) The industry board must give the designated employee written notice in accordance with the regulations of its decision adjusting the designated employee's entitlement under this Act.

83 Benefits under other laws – reimbursement of employer to extent of entitlement under this Act

- (1) This section applies if:
 - (a) a designated employee makes an election in accordance with section 82 nominating the law under which the employee elects to take the employee's long service leave entitlement or benefit (the ***nominated law***); and
 - (b) an employer pays the employee an amount (the ***LSL amount***) in accordance with the nominated law.
- (2) The employer may apply to the relevant industry board for reimbursement of the LSL amount.
- (3) The application must:
 - (a) be made in the approved form; and
 - (b) include, or be accompanied by, any information required by the approved form.
- (4) If the industry board is satisfied that the LSL amount paid by the employer was properly paid under the nominated law, the board must pay the employer as soon as practicable the LSL amount less:
 - (a) any amount in excess of the amount that would have been payable to the employee if, instead of making an election under section 82, the employee had applied for a payment under section 53; and
 - (b) any amount outstanding that is payable by the employer to the board.
- (5) The industry board must give the employer written notice in accordance with the regulations of its decision refusing payment or making payment of a particular amount under this section.

84 Power to require information

- (1) For the purposes of investigating a relevant matter, an industry board may, by written notice, require a person:
 - (a) to give to the board, within the time specified in the notice, information required by the board in a form determined by the board; or
 - (b) to produce to the board, within the time specified in the notice, documents required by the board; or
 - (c) to attend for the purpose of giving evidence before the board at a time and place specified in the notice.
 - (2) The industry board may:
 - (a) require that information given in writing to the board be verified by statutory declaration; and
 - (b) require that a person attending before it give evidence and, if it thinks fit, give that evidence on oath or by affirmation.
 - (3) The industry board is authorised to administer an oath or to take an affirmation for the purposes of subsection (2).
 - (4) A person commits an offence if the person:
 - (a) is issued with a notice under this section; and
 - (b) fails to comply with the notice.
- Maximum penalty: 50 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.
 - (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.
 - (7) In this section:

relevant matter means:

- (a) any matter relevant to ascertaining whether a person is liable to make a payment to an industry board under this Act and, if so, the extent of that liability; and
- (b) any other matter prescribed by regulation.

85 No contracting out

- (1) The provisions of this Act have effect despite any provision to the contrary in any contract.
- (2) A provision in an agreement, whether in writing or not, under which the operation of this Act is, or is purported to be, excluded, modified or restricted, or that has the effect of excluding, modifying or restricting the operation of this Act, is void.

86 Adverse action against employee

- (1) An employer must not dismiss or threaten to dismiss an employee from, or prejudice or threaten to prejudice an employee in, employment because the employee is entitled to:
 - (a) long service leave under this Act; or
 - (b) payment of an amount under section 53.
- (2) A person commits an offence if:
 - (a) the person is an employer; and
 - (b) the person acts in contravention of subsection (1).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) A court by which a person is convicted of an offence against this section may, on application by the person against whom the offence was committed:
 - (a) award compensation to the applicant for loss resulting from the commission of the offence; and
 - (b) if the applicant was dismissed from employment – order the person to re-employ the applicant on conditions determined by the court.

87 Misleading information

- (1) A person commits an offence if:
 - (a) the person intentionally provides or gives information to another person; and
 - (b) the information is misleading and the person has knowledge of that circumstance; and

- (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person commits an offence if:

- (a) the person intentionally provides or gives a document to another person; and
- (b) the document contains misleading information and the person has knowledge of that circumstance; and
- (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant, when providing or giving the information or document:

- (a) draws the misleading aspect of the information or document to the other person's attention; and
- (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the information or document.

- (4) In this section:

acting in an official capacity, in relation to a person, means the person is performing functions under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

88 Commencement of criminal proceedings

- (1) Despite any other law, proceedings for an offence against this Act may be instituted within 3 years after the act or omission alleged to constitute the offence.

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- (2) Proceedings for an offence against this Act may only be commenced by:
- (a) a person authorised by the Minister; or
 - (b) a Registrar; or
 - (c) an authorised officer or other person authorised by a Registrar.

89 Evidentiary certificates

- (1) An industry board may issue a certificate that states:
- (a) that, on a specified date or during a specified period:
 - (i) a specified person was or was not registered as an employee or an employer under this Act; or
 - (ii) a specified person was an authorised officer; or
 - (b) that a specified employer had not provided a return in the approved form to the industry board by a specified date; or
 - (c) that a specified employer had failed to pay a levy to the industry board by a specified date; or
 - (d) that an assessment of the levy payable by a specified employer had been made by the industry board and that the amount of the assessment had not been paid; or
 - (e) that an amount specified in the certificate was payable to the industry board by a specified person; or
 - (f) that a notice or other document had been given to a specified person.
- (2) A certificate under this section is admissible in legal proceedings as evidence of the matters stated in the certificate.

90 Offence to disclose certain information

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (b) the information is confidential and the person is reckless in relation to that circumstance; and

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- (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; or
 - (iii) authorised by regulation; and
 - (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for section 90

In addition to the circumstances specified in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

91 Protection from civil liability

- (1) The following persons are not civilly liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act:
 - (a) a member of an industry board;
 - (b) a Registrar or Deputy Registrar;
 - (c) a member of the staff of an industry board;
 - (d) an authorised officer;
 - (e) a person assisting an authorised officer.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

- (3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

92 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) The Minister must publish the approved form on the Agency's website.

93 Regulations

- (1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

- (2) A regulation may provide for the following:
- (a) exclusions from the operation of Schedule 2;
 - (b) requirements that employers or former employers notify an industry board of a specified matter;
 - (c) requirements for the keeping of specified records or other information by an employer or former employer and for the provision of any report, document or other information to a person or body that performs a function under this Act;
 - (d) maximum penalties for an offence against a regulation, other than an offence of strict liability or absolute liability, of 200 penalty units;
 - (e) matters to be taken into account when making a decision under this Act.

94 Review of Act

- (1) The Minister must review this Act to determine whether its provisions remain appropriate for achieving the object of this Act.
- (2) The review must be undertaken as soon as possible after 5 years from the commencement of this Act.
- (3) A report on the outcome of the review must be tabled in the Legislative Assembly within 6 years from the commencement of this Act.

Part 11 Transitional matters for Portable Long Service Leave (Community Services Sector) Act 2024

95 Definition

In this Part:

designated day means a day specified by the Administrator, by *Gazette* notice, as the designated day for the purposes of the provision in which the term is used.

96 Extension of time for employers for registration application and first return

- (1) This section applies in relation to a person who is an employer in the community services sector on the designated day, or who becomes an employer in the community services section within 28 days after the designated day.
- (2) Despite section 39(2)(c), the person is not required to comply with section 39(1) until 90 days after the designated day.
- (3) Despite section 60(1), the person's first return is required within 28 days after the end of the quarter during which the person is registered on the register of designated employers for the community services sector.

97 Matters for current community services sector employees

- (1) This section applies in relation to a person (the **current employee**) who:
 - (a) is working in the community services sector immediately before the designated day; and
 - (b) becomes registered as an employee on the register of designated employees for the community services sector.
- (2) For the purposes of section 35 and despite section 35(3):
 - (a) if the current employee has taken long service leave, or received a payment in lieu of long service leave, in relation to a period of work in the community services sector for the relevant employer before the designated day (the **exhausted LSL period**) – the current employee's registration day is the first day after the exhausted LSL period from which the current employee has worked in the community services sector without a break of continuity; or

- (b) otherwise – the current employee's registration day is the earliest day from which the current employee has worked in the community services sector without a break of continuity.
- (3) If the current employee becomes entitled to long service leave, or a payment on account of long service leave, under this Act, the Community Services Sector Long Service Leave Board may recover from an employer in the community services sector for whom the employee worked at any time between the employee's registration day and the designated day (a **relevant employer**) an amount calculated using the following formula:

$$A = (TLSL - DLSL) \times (RETH/TH)\%$$

where:

A is the amount recoverable.

TLSL is the total amount payable to the current employee under section 53.

DLSL is the amount of the TLSL that is attributable to the period on and from the designated day.

RETH is the total number of hours worked in the sector by the current employee for the relevant employer between the employee's registration day and the designated day.

TH is the total number of hours worked in the sector by the current employee between the employee's registration day and the designated day.

- (4) An amount that is recoverable under subsection (3) is recoverable as if it were a levy payable under this Act.
- (5) The Community Services Sector Long Service Leave Board may, by written notice given to the current employee or a relevant employer, require the current employee or a relevant employer to give the board, within a reasonable time specified in the notice, the information or documents specified in the notice that the board considers necessary or convenient for it to decide matters for the purposes of this section.
- (6) A person commits an offence if:
- (a) the person is required to give an industry board information or documents under subsection (5); and

(b) the person contravenes the requirement.

Maximum penalty: 20 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.
- (9) The Community Services Sector Long Service Leave Board must give the current employee written notice in accordance with the regulations of its decision about the current employee's registration day.
- (10) The Community Services Sector Long Service Leave Board must give each of the current employee's relevant employers written notice in accordance with the regulations of its decision about the current employee's registration day and about the amount recoverable from the relevant employer under subsection (3).

98 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature because of the enactment of this Act.
- (2) The regulation must state it is made under this section.
- (3) This section, and each regulation made under it, is repealed 1 year after the commencement of this section.

Schedule 1 Establishment of industry boards

section 4(1), definition ***Community Services Sector Long Service Leave Board***

1 Community Services Sector Long Service Leave Board

The Community Services Sector Long Service Leave Board is established in relation to the community services sector.

Note for clause 1

Other industry boards may be added to this Schedule in relation to other sectors.

Schedule 2 Community services

section 4(1), definition ***community services***

- 1 Childcare services, including care and support services for the development of pre-school age children and family day care services, but not including before school care or after school care for school-aged children provided by a school.
- 2 Community legal services.
- 3 Crisis assistance and accommodation support services.
- 4 Disability services, including the provision of personal care and domestic and lifestyle support to a person living with disability in the community or a residential setting.
- 5 Health and wellbeing services provided to an Aboriginal community by an Aboriginal-controlled health service.
- 6 Residential and community aged-care.
- 7 Respite services and day care services.
- 8 Services covered by a corresponding law that relates to the community services sector (however described) that are prescribed by regulation to be included for the purposes of this Schedule.
- 9 Social, community and welfare services, including home care services, social work, the provision of recreation activities and the provision of training, including group training.
- 10 Youth support and development services, and services associated with community development, including where the services are primarily engaged in policy, advocacy or representation on behalf of organisations involved in the delivery of such services.

Schedule 3 Reviewable decisions and affected persons

section 77

Item	Reviewable decision	Affected person
1	A decision of an industry board under section 27 that no payment be made to a person	The person
2	A decision of an industry board under section 27 to make a payment to a person of a particular amount	The person paid the particular amount
3	A decision of an industry board under section 34 to refuse to register a person who applied for registration	The applicant
4	A decision of an industry board under section 38 to register a person on the board's own initiative	The person who is registered
5	A decision of an industry board under section 39 to refuse to register a person who applied for registration	The applicant
6	A decision of an industry board under section 43 to refuse to cancel the registration of an employer who applied for cancellation	The applicant
7	A decision of an industry board under section 53 refusing payment, or making payment of a particular amount, on a person's application	The applicant
8	A decision of an industry board under section 54 refusing payment, or making payment of a particular amount, on a person's application, or, if the person has died, an application of the person's personal representative	The applicant

Item	Reviewable decision	Affected person
9	A decision of an industry board under section 55 refusing payment, or making payment of a particular amount, on a person's application, or, if a person has died, an application of the person's personal representative	The applicant
10	A decision of an industry board under section 82 adjusting a designated employee's entitlement under this Act	The designated employee
11	A decision of an industry board under section 83 refusing payment, or making payment of a particular amount, on an employer's application	The applicant
12	A decision of the Community Services Sector Long Service Leave Board under section 97 about a current employee's registration day	The current employee or each relevant employer of the current employee
13	A decision of the Community Services Sector Long Service Leave Board under section 97 about the amount recoverable from a relevant employer of the current employee	The relevant employer
14	A decision of an industry board under this Act prescribed by regulation	A person prescribed by regulation in relation to that decision
