



New South Wales

Community Services Sector (Portable Long Service Leave) Bill 2024

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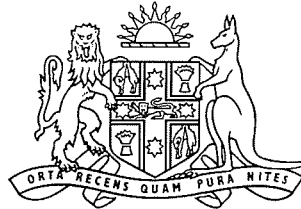
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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Community Services Sector (Portable Long Service Leave) Bill 2024

Act No _____, 2024

An Act to establish a scheme for the portability of long service leave for workers in the community services sector; and to make consequential amendments to other legislation.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Community Services Sector (Portable Long Service Leave) Act 2024*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

The dictionary in Schedule 3 defines words used in this Act.

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

4 Meaning of “community service work” and “community service”

- (1) In this Act, *community service work* means—
- (a) work to provide a community service, or
 - (b) work for an employer, if the predominant purpose of the employer is to provide a community service.

Note— Under section 7, the Minister may declare work or an activity to be or not be community service work.

- (2) In this Act, *community service* means a service—

- (a) specified in Schedule 1, or
- (b) prescribed by the regulations.

- (3) The regulations may amend Schedule 1 by—

- (a) inserting a service into the schedule, or
- (b) amending a service specified in the schedule.

5 Meaning of “worker”

- (1) In this Act, *worker* means a person who—

- (a) is engaged, on a full-time, part-time or casual basis, by an employer to do community service work as an employee, or
- (b) does community service work for another person for fee or reward on the person’s own account, and is not an employee (a *contractor*), or
- (c) is in a class prescribed by the regulations.

Note— Under section 7, the Minister may declare a person to be a worker, employee or contractor.

- (2) In this Act, *worker* does not include the following—

- (a) a person doing community service work under—
 - (i) a contract of service with a partnership if the person is a partner and participates in the management of the partnership or shares the profits, or
 - (ii) a contract of service with the Commonwealth, the State or a local government authority, or
 - (iii) a contract, whether or not a contract of service, with a corporation of which the person is a director, or

- (iv) a contract, whether or not a contract of service, with a trust of which the person is a trustee,
- (b) a person who is excluded by the regulations.

6 Meaning of “employer”

- (1) In this Act, **employer** means a person who—
 - (a) employs 1 or more persons to do community service work, or
 - (b) is in a class prescribed by the regulations.

Note— Under section 7, the Minister may declare a person to be an employer.
- (2) A person is an employer only in relation to a person the employer employs to do community service work.
- (3) A person who supplies a person through a labour hire arrangement to do community service work is taken to be the employer who engages the person.
- (4) In this Act, **employer** does not include the following—
 - (a) the Commonwealth,
 - (b) the State,
 - (c) a local government authority,
 - (d) a company whose only workers are directors, if each of the directors participates in the management of the company or shares its profits,
 - (e) a person to whom subsection (1)(a) applies who is excluded by the regulations.

7 Ministerial declarations about coverage of Act

- (1) The Minister may, by order published on the NSW legislation website, declare the following for the purposes of this Act—
 - (a) work or an activity is or is not community service work,
 - (b) a person is—
 - (i) a worker, or
 - (ii) an employee, or
 - (iii) an employee of a particular employer, or
 - (iv) a contractor,
 - (c) a person is—
 - (i) an employer, or
 - (ii) an employer of a particular employee, or
 - (iii) an employer with a predominant purpose of providing a community service.
- (2) The *Interpretation Act 1987*, sections 40 and 41 apply to an order under this section in the same way as the sections apply to statutory rules.

8 Community Services Sector Long Service Leave Committee

- (1) The Community Services Sector Long Service Leave Committee is constituted by this Act.
- (2) The Committee must consist of the following members—
 - (a) the Secretary or a nominee of the Secretary,
 - (b) 8 persons appointed by the Minister, as follows—

- (i) 2 persons nominated by a prescribed peak body representing workers, including workers in the community services sector,
 - (ii) 2 persons nominated by a prescribed body representing workers in the community services sector,
 - (iii) 2 persons nominated by a prescribed body representing employers in the community services sector,
 - (iv) 2 persons nominated by another prescribed body representing employers in the community services sector.
- (3) The person specified in subsection (2)(a) must be the Chairperson of the Committee.
- (4) Schedule 2 contains provisions relating to the members and procedure of the Committee.

Part 2 Registration of employers and workers

Division 1 Registration of employers

9 Corporation must keep register of employers

The Corporation must keep a register of persons who are registered as employers under this Act.

10 Registration of employers

- (1) The Corporation may, on application by a person, register the person as an employer.
- (2) A person must apply to the Corporation for registration as an employer within—
 - (a) for a person who becomes an employer on or after the commencement of this Act—1 month after becoming an employer, or
 - (b) for a person who is an employer immediately before the commencement of this Act—1 month after the commencement, or
 - (c) a longer period specified by the Corporation.Maximum penalty—50 penalty units.
- (3) The Corporation must determine an application for registration of an employer by—
 - (a) registering the person as an employer, if the Corporation is satisfied the person is an employer, or
 - (b) refusing to register the person as an employer.

11 Information in employers register

- (1) The employers register must include the following information for each registered employer—
 - (a) the employer's name,
 - (b) the employer's trading name, if any,
 - (c) the employer's ABN, if any,
 - (d) the address of the employer's principal place of business,
 - (e) if the employer is a corporation—
 - (i) the address of the corporation's registered office, and
 - (ii) the corporation's ACN,
 - (f) the community services provided by the employer,
 - (g) the day on which the Corporation received the person's application for registration,
 - (h) if the person is no longer an employer—the day the person ceased being an employer.
- (2) The Corporation may include other information in the employers register the Corporation considers necessary for the administration of this Act.

12 Certificate of registration for employers

- (1) The Corporation must give each registered employer a certificate of registration that includes the information about the employer included in the employers register under section 11.
- (2) If the details shown on an employer's certificate of registration change, the employer must, within 7 days after the change, give the Corporation written notice of the change.

Maximum penalty—5 penalty units.

- (3) An employer's certificate of registration is evidence of the matters stated in the certificate.

Division 2 Registration of workers

13 Corporation must keep register of workers

The Corporation must keep a register of persons who are registered as workers under this Act.

14 Registration of workers

- (1) The Corporation may register a person as a worker—
 - (a) on application by the person, or
 - (b) on application by the person's employer under subsection (2), or
 - (c) on the Corporation's own initiative under subsection (4).
- (2) If a person does not apply for registration as a worker within 3 months after starting to do community service work for an employer, the employer must apply to the Corporation for registration of the person as a worker within 14 days after the end of the 3-month period.

Maximum penalty—20 penalty units.

- (3) The Corporation must determine an application for registration of a worker by—
 - (a) registering the person as a worker, or
 - (b) refusing to register the person as a worker.
- (4) The Corporation may also register a person as a worker if the Corporation—
 - (a) becomes aware of information, other than because of an application under this part, indicating the person is, or was, a worker, and
 - (b) is satisfied the person should be registered as a worker.

15 Registration of foundation workers

- (1) A person who is registered as a worker within 6 months after the commencement of this Act must be registered as a *foundation worker*.
- (2) The Corporation may, on application or the Corporation's own initiative, also register a person as a foundation worker more than 6 months after the commencement of this Act if the Corporation is satisfied there are exceptional circumstances.

16 Worker's registration day

- (1) In this Act, *worker's registration day* means—
 - (a) for a worker registered under section 14(1)(a) or (b)—the day on which the Corporation receives the application, or
 - (b) for a worker registered under section 14(4)—the day the Corporation receives the information referred to in section 14(4)(a).
- (2) Despite subsection (1), if the Corporation is satisfied the person was a worker for a period before the worker's registration day, the Corporation may nominate an earlier day as the worker's registration day.
- (3) The Corporation must not nominate a day that is—

- (a) more than 2 financial years before the worker's registration day under subsection (1), unless the Corporation is satisfied there are special circumstances, or
- (b) before the commencement of this Act.

17 Information in workers register

- (1) The workers register must include the following information for each registered worker, or as much of the following information as the Corporation is reasonably able to obtain—
 - (a) the worker's name,
 - (b) if the worker is an employee—each employer for whom the employee works,
 - (c) if the worker is a contractor—the worker's ABN, if any,
 - (d) the number of days of service credited to the worker,
 - (e) the total ordinary remuneration paid to the worker for community service work,
 - (f) the worker's entitlement to long service leave,
 - (g) details of the long service leave granted to, or taken by, the worker, or payment instead of long service leave made to the worker, under this Act or the *Long Service Leave Act 1955*,
 - (h) the worker's registration day,
 - (i) if the worker no longer does community service work—the day on which the worker ceased doing community service work.
- (2) The Corporation may include in the workers register other information the Corporation considers necessary for the administration of this Act.
- (3) The Corporation may, in relation to the information required under subsection (1)(e), rely on any information the Corporation thinks fit, including information in a return submitted under Part 4.
- (4) The Corporation must, on request by a registered worker, give the worker information about the worker included in the register.

18 Annual information for workers

- (1) The Corporation must, as soon as practicable after 31 July each year, give each registered worker the following information about the financial year ending on 30 June in that year—
 - (a) the number of days of service credited to the worker in the workers register for the financial year,
 - (b) the number of days of service, from the worker's registration day to the end of the financial year, credited to the worker in the workers register,
 - (c) the total ordinary remuneration paid to the worker during the financial year by a registered employer,
 - (d) if the worker is a contractor—the total amount paid by the contractor under section 42 during the financial year.
- (2) A worker may, within 2 years after receiving the information, make an objection to the Corporation if the worker believes the worker should have been credited with more days of service in the workers register for the financial year.
- (3) The Corporation may determine an objection received more than 2 years after the worker receives the information if the Corporation is satisfied there are special circumstances.

- (4) The Corporation must determine the objection by—
 - (a) dismissing the objection, or
 - (b) allowing the objection and amending the number of days of service credited to the worker in the workers register for the financial year.

Division 3 Cancellation and suspension of registration of workers

19 Cancellation of worker's registration

- (1) The Corporation may cancel a worker's registration if the Corporation is satisfied—
 - (a) the person is not a worker, and
 - (b) the person's application for registration as a worker should have been refused.
- (2) The Corporation must cancel a worker's registration if the person has not been credited under this Act or a corresponding law with at least 1 day's service for 4 consecutive years.
- (3) For subsection (2), a non-service day prescribed for section 20 must be treated as 1 day's service.
- (4) The Corporation must also cancel a worker's registration—
 - (a) on the making of a pro rata payment under section 52 to the worker, or
 - (b) at the worker's request.
- (5) The cancellation of a worker's registration under subsection (1) takes effect—
 - (a) 42 days after the Corporation notifies the worker of the cancellation, or
 - (b) if an appeal under section 68 is made against the cancellation within that period—on the date on which the appeal is withdrawn or the cancellation is confirmed.
- (6) If a worker's registration is cancelled under subsection (1) or (2)—
 - (a) the person ceases being a registered worker on the day the registration is cancelled, and
 - (b) the person is not entitled to apply for, or to be paid an amount for, long service leave for any days of service credited to the person in the workers register before the day the person ceased being a registered worker.
- (7) Subsection (6)(b) does not apply if the person would have been entitled to a pro rata payment under section 52, if the person's registration was not cancelled.
- (8) The regulations may provide for the refund of long service leave levies on cancellation of a worker's registration.

20 Suspension of worker's registration

- (1) The Corporation may suspend a worker's registration if—
 - (a) the worker has been credited with at least 1,825 days of service in the workers register, and
 - (b) 1,460 non-service days have elapsed since the last date for which the worker was credited with service under this Act or a corresponding law.
- (2) The Corporation may restore a suspended worker's registration at any time.
- (3) If the Corporation restores a suspended worker's registration under subsection (2), any days of service under this Act credited to the worker in the workers register at the date of suspension must be restored.

- (4) While a worker's registration is suspended—
 - (a) the worker must not be credited with any service in the workers register during the period of suspension, and
 - (b) the Corporation is not required to give information to the worker under section 18.
- (5) While a worker's registration is suspended, the worker is entitled to apply for and be paid a long service leave payment for any days of service credited to the worker in the workers register at the date of suspension.
- (6) If a worker has died, whether before or after the worker's registration was suspended, the deceased worker's personal representative may apply for and be paid any long service leave payment for any days of service credited to the worker in the workers register.
- (7) Subsections (5) and (6) are subject to section 52.
- (8) An application under subsection (6) may not be made more than 2 years, or a longer period prescribed by the regulations, after the later of—
 - (a) the date of suspension, or
 - (b) the date on which the worker died.
- (9) In this section—
non-service day means a day prescribed by the regulations for subsection (1).

21 Reinstatement of cancelled worker's registration

- (1) The Corporation may, within 6 years after the cancellation of a worker's registration, reinstate the registration if the Corporation is satisfied there are special circumstances.
- (2) The Corporation may reinstate a worker's registration that was cancelled under section 19(2) if the Corporation is satisfied the worker has been credited with a period of service under a corresponding law within the period of 4 years before the registration was cancelled.
- (3) If a worker's registration is reinstated under this section, this Act applies in relation to the worker as if the registration had not been cancelled.
- (4) This section does not affect another right that a person whose registration has been cancelled may have to again become a registered worker.

Division 4 Cancellation of registration of employers

22 Cancellation of employer's registration

- (1) The Corporation may cancel an employer's registration if the Corporation is satisfied—
 - (a) the person is not an employer, and
 - (b) the person's application for registration as an employer should have been refused.
- (2) If a registered employer ceases engaging any workers to do community service work, the registered employer may apply to the Corporation for cancellation of the employer's registration.
- (3) The Corporation must cancel the employer's registration if the Corporation is satisfied the person has ceased engaging any workers to do community service work.

- (4) The person ceases being a registered employer on the day the employer's registration is cancelled but must pay any long service leave levy that was due to the Corporation before that day.

Division 5 General

23 Corporation may require further information about employers

- (1) The Corporation may, by written notice, require an applicant under section 10(2) to give the Corporation information or evidence the Corporation considers necessary to properly consider the application.
- (2) The notice must specify a reasonable time within which the information or evidence must be given to the Corporation.
- (3) An applicant given a notice under subsection (1) must not, without reasonable excuse, fail to give the Corporation the information or evidence within the specified period.
Maximum penalty for subsection (3)—40 penalty units.

24 Corporation may require further information about workers

- (1) The Corporation may, by written notice, require an applicant under section 14(1)(a) or (2) to give the Corporation information or evidence the Corporation considers necessary to properly consider the application.
- (2) The notice must specify a reasonable time within which the information or evidence must be given to the Corporation.
- (3) The Corporation may refuse to grant an application under section 14 if the applicant fails, without reasonable excuse, to give the Corporation the information or evidence within the specified period.

25 Corporation may require further information about unregistered employers

- (1) This section applies if the Corporation believes a person is or was an employer, but is or was not a registered employer.
- (2) The Corporation may, by written notice, require the person to give the Corporation information or evidence the Corporation considers necessary to decide whether the person is or was an employer at the relevant time.
- (3) The notice must specify a reasonable time within which the information or evidence must be given to the Corporation.
- (4) The person must not, without reasonable excuse, fail to give the Corporation the information or evidence within the specified period.
Maximum penalty for subsection (4)—40 penalty units.

26 Notice of registration decisions

- (1) The Corporation must, within 14 days after making a decision under this part, give written notice of the decision to the person to whom the decision relates.
- (2) Notice of a decision to register a person as a worker must specify the worker's registration day.
- (3) Notice of a decision to refuse to register or to cancel the registration of a person must include—
 - (a) an explanation of the decision, and
 - (b) the person's rights to appeal under Part 7.

27 Inspection of registers

- (1) The Corporation must, on request, give a registered employer, or a person acting on behalf of a registered employer, access to, and a certified copy of, an entry in the employers register that relates to the employer.
- (2) The Corporation must, on request, give a registered worker, or a person acting on behalf of a registered worker, access to, and a certified copy of, an entry in the workers register that relates to the worker.

Part 3 Service credits

28 Meaning of “engagement period”

- (1) In this Act, *engagement period*, for a worker who is an employee, means the period—
 - (a) starting on the day the person is engaged by an employer as a worker, and
 - (b) ending on the day the person ceases being engaged by an employer as a worker.
- (2) For subsection (1), it is not relevant whether the employer who engages the worker is the employer who ceases engaging the worker.
- (3) In this Act, *engagement period*, for a worker who is a contractor, means the period—
 - (a) starting on the day the person starts doing community service work as a contractor, and
 - (b) ending on the day the person ceases doing community service work as a contractor.
- (4) In this Act, *engagement period*, for a worker, includes any day on which the worker did not do community service work—
 - (a) because of incapacity for work for which the worker is entitled to compensation under the *Workers Compensation Act 1987*, or
 - (b) for a worker who is an employee—because the worker had been dismissed by the worker’s employer to ensure the worker did not take long service leave during the worker’s employment.
- (5) The Corporation may, on request of an employer or worker, determine the day on which an engagement period starts or ends.

29 Service credits

- (1) A registered worker must be credited in the workers register with 1 day’s service for each day, including a day when the worker does not do community service work, in each engagement period.
- (2) A registered worker must not be credited in the workers register with a day’s service that occurs before the worker’s registration day.
- (3) A registered worker must not be credited in the workers register with more than 365 days of service in a financial year, even if a particular financial year has 366 days.

30 Service credits under corresponding laws

- (1) This section applies if a registered worker is entitled to be credited with both—
 - (a) a number of days of service in the workers register, and
 - (b) a further number of days of service in a similar register or record kept under a corresponding law.
- (2) The days of service that must be credited to the registered worker in the workers register for a financial year must be adjusted to ensure the total number is not more than 365 days.
- (3) The adjustment made under subsection (2) must be made—
 - (a) when an application is made under this Act or a corresponding law for payment of long service leave for the service under this Act or a corresponding law, or
 - (b) at another time determined by the Corporation.

31 Foundation worker service credits

Despite section 29, a worker who is registered as a foundation worker must be credited, on the day the worker is registered, with 365 days of recognised service.

32 Service credits for breaks in engagement periods

The Corporation may, on application by a registered worker, credit the registered worker with 1 day's service in the workers register for each day of any period not exceeding 3 months during which the Corporation is satisfied that, because of circumstances prescribed by the regulations, the registered worker was not eligible to be credited with service under section 29.

33 Service credits for insolvent employers

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

Part 4 Returns and records

Division 1 Returns to Corporation about workers

34 Returns by employers

- (1) Within 14 days after the end of a return period, a person who is or was an employer during the return period must give the Corporation a return for the period.
Maximum penalty—40 penalty units.
- (2) The return must specify the following for each worker who was an employee during the return period—
 - (a) the total amount of ordinary remuneration paid by the employer to the worker during the return period for community service work done by the worker,
 - (b) if the worker's engagement with the person started during the return period—the day on which the engagement period for the worker started,
 - (c) if the worker's engagement with the person ended during the return period—the day on which the engagement period for the worker ended,
 - (d) other information prescribed by the regulations.Maximum penalty—40 penalty units.
- (3) The person must, on the request of the Corporation, verify the information specified in the return in the way requested by the Corporation.
Maximum penalty—40 penalty units.
- (4) The person must give notice to the Corporation about a change to information referred to in subsection (2) within 1 month after the change.
Maximum penalty—40 penalty units.
- (5) This section does not require a person to record information about a worker who is the person's employee if the worker—
 - (a) is not a registered worker, and
 - (b) was not recorded as a worker in the person's return for the previous return period, and
 - (c) did community service work for the person for less than 5 days during the current return period.

35 Exemption from giving returns to Corporation

- (1) An employer may apply to the Corporation for an exemption from the requirement to give the Corporation a return under section 34 in relation to a person who is, or was, engaged by the employer as a worker.
- (2) The Corporation may grant the exemption if the Corporation is satisfied—
 - (a) the employer no longer engages the person to do community service work, or
 - (b) the employer complies with, or makes contributions to, a scheme in another State or Territory about long service leave payments for workers that is similar to the scheme established by this Act in relation to the person.
- (3) The Corporation may, by written notice to the employer, revoke an exemption granted under subsection (2) if the Corporation is satisfied the exemption should no longer be granted.
- (4) If the Corporation refuses to grant an application for, or revokes, an exemption, the Corporation must give the employer written notice of the decision.

- (5) The notice must include—
 - (a) an explanation of the decision, and
 - (b) the employer's rights to appeal under Part 7.

36 Returns by contractors

A contractor who is, or was, a registered worker during a return period must, within 14 days after the end of the return period, give the Corporation a return specifying the following information—

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

Maximum penalty—20 penalty units.

Division 2 Review of ordinary remuneration of workers

37 Corporation may review ordinary remuneration of workers

- (1) This section applies if the Corporation considers that the total ordinary remuneration for a worker specified in a return given to the Corporation under section 34 or 36 for a return period may be insufficient or excessive because of the nature of the community service work done by the worker in the return period.
- (2) The Corporation must, by written notice to the relevant parties, invite written submissions in relation to the ordinary remuneration for the worker.
- (3) After considering written submissions received within 1 month of giving the notice under subsection (2), the Corporation must—
 - (a) decide that the total ordinary remuneration specified in the return for the return period is reasonable, or
 - (b) fix another amount as the total ordinary remuneration of the worker for the return period.
- (4) The Corporation must, within 14 days after making a decision under subsection (3), give written notice of the decision to the relevant parties.
- (5) If the Corporation decides to fix another amount as the total ordinary remuneration under subsection (3)(b), the notice must specify the following—
 - (a) the total ordinary remuneration fixed by the Corporation for the return period,
 - (b) a statement of the effect of section 38.
- (6) In this section—

relevant party means—

 - (a) in relation to a return under section 34—
 - (i) the person who gave the return, and
 - (ii) the worker, and
 - (b) in relation to a return under section 36—the contractor.

38 Variation of ordinary remuneration

- (1) This section applies if the Corporation fixes an amount under section 37(3)(b) as the total ordinary remuneration of a worker or contractor who is a registered worker for a return period (the *varied amount*).

- (2) If the varied amount is more than the amount stated in the return for the return period (the *returned amount*), the employer or contractor must pay the Corporation the additional amount payable as the long service leave levy for the worker or contractor for the return period.
- (3) If the varied amount is less than the returned amount, the Corporation must—
 - (a) if asked by the employer or contractor to refund the overpayment of the long service leave levy—refund the overpayment, or
 - (b) otherwise—credit the overpayment against future amounts payable as a long service leave levy by the employer or contractor.
- (4) An employer or contractor who is required under subsection (2) to pay an additional amount must pay the amount within—
 - (a) 1 month after the day on which the employer or contractor receives notice under section 37 of the Corporation’s decision, or
 - (b) the additional period determined by the Corporation.Maximum penalty for subsection (4)—20 penalty units.

Division 3 Records about workers

39 Employers must keep records about employees

- (1) An employer must keep a written record of the following for each worker who is an employee—
 - (a) the employee’s name and date of birth,
 - (b) the employee’s telephone number and address,
 - (c) if the employee is a registered worker—the registration number of the worker,
 - (d) the nature of the community service work carried out by the employee,
 - (e) the employee’s ordinary remuneration for each return period,
 - (f) the number of days worked by the employee in each return period,
 - (g) the date when the employee started service with the employer,
 - (h) long service leave granted to the employee,
 - (i) if the employee ceases service with the employer—the date the employee ceases service,
 - (j) a pro rata payment made under section 52 to the employee.Maximum penalty—20 penalty units.
- (2) An employer must keep a copy of the employment contract for each employee.
Maximum penalty—20 penalty units.
- (3) An employer must keep the records about an employee under this section for 7 years after the day the employee ceases to be engaged by the employer.
Maximum penalty—20 penalty units.

40 Contractors must keep records

- (1) A contractor who is registered as a worker must keep a written record of the following—
 - (a) the nature of the community service work done by the contractor,
 - (b) when and for whom community service work is done,
 - (c) the contractor’s ordinary remuneration for each return period,

- (d) the number of days worked by the contractor in each return period.
Maximum penalty—20 penalty units.
- (2) The contractor must keep the written record for 7 years after the day the record is made.
Maximum penalty—20 penalty units.

Part 5 Long service leave levy

41 Determination of long service leave levy payable by employers and contractors

- (1) The amount of the long service leave levy payable by an employer on the ordinary remuneration for each worker engaged by the employer to do community service work is the percentage of the worker's ordinary remuneration determined by the Minister by order published on the NSW legislation website.
- (2) The amount of the long service leave levy payable by a contractor who is a registered worker is the percentage of the contractor's ordinary remuneration determined by the Minister by order published on the NSW legislation website.
- (3) The Corporation must, from time to time, give the Minister a written recommendation about the long service leave levy that should be payable by employers and contractors who are registered workers.
- (4) Before making an order under this section, the Minister must have regard to a recommendation from the Corporation under subsection (3), but is not required to follow the recommendation.
- (5) The *Interpretation Act 1987*, sections 40 and 41 apply to an order under this section in the same way as the sections apply to statutory rules.

42 Payment of long service leave levy by employers and contractors

- (1) A person who is, or was, an employer during a return period must, when the person gives the Corporation a return under section 34, pay to the Corporation the long service leave levy for the return period.
Maximum penalty—20 penalty units.
- (2) A person who is, or was, a contractor registered as a worker during a return period must, when the person gives the Corporation a return under section 36, pay to the Corporation the long service leave levy for the return period.

43 Late payment of long service leave levy

- (1) A long service leave levy that is not paid at or before the time the levy is due bears compound interest at the rate prescribed by the regulations.
- (2) Interest forms part of, and may be recovered as, an unpaid long service leave levy.
- (3) If the Corporation is satisfied there are special circumstances, the Corporation may, by direction—
 - (a) extend the time within which payment of all or part of a long service leave levy must be made, or
 - (b) waive or reduce the amount of interest payable under subsection (1).
- (4) Subsection (3) has effect despite section 42.

44 Assessment of unpaid long service leave levy

- (1) If the Corporation reasonably believes a long service leave levy has not been fully paid, the Corporation may make an assessment of the amount owing.
- (2) The Corporation must give a notice of the assessment to the person to whom the assessment relates.
- (3) The notice must include—
 - (a) an explanation of the decision, and
 - (b) the person's rights to appeal under Part 7.

45 Collection of long service leave levies by authorised agents

- (1) The Corporation may enter into an agreement with an agent appointed by the Corporation for the collection of long service leave levies.
- (2) An agreement may provide for the payment of remuneration for the authorised agent from the Community Services Sector Long Service Leave Fund under the *Long Service Corporation Act 2010*, section 13A.

Part 6 Long service leave

Division 1 Entitlement to long service leave

46 Long service leave entitlements

A registered worker is entitled to leave in accordance with this part.

47 Long service leave formula

A registered worker's entitlement to long service leave is calculated according to the following formula—

$$W = 0.8667 \times \frac{RS}{365}$$

where—

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

W means the number of weeks of long service leave to which the registered worker is entitled.

48 Amount of long service leave

- (1) A registered worker who completes 2,555 days or more of recognised service after the commencement of this Act is entitled to 6.1 weeks of long service leave under this Act.
- (2) A registered worker who completes a further 365 days of recognised service after last becoming entitled to long service leave under this Act is entitled under this Act to—
 - (a) 0.8667 weeks of long service leave for the additional 365 days of recognised service, and
 - (b) a further 0.8667 weeks of long service leave for each subsequent 365 days of recognised service.

49 Employers must grant long service leave

- (1) If a registered worker becomes entitled to long service leave under this Act, the employer must grant the worker the long service leave within—
 - (a) 6 months after the day on which the worker becomes entitled to the long service leave under this Act, or
 - (b) if the Corporation has allowed, on application by the employer or worker, a period longer than 6 months—the period allowed by the Corporation, or
 - (c) if the employer and worker agree on a period longer than 6 months and less than 5 years—the agreed period.Maximum penalty—50 penalty units.
- (2) If an employer and a worker agree on a period under subsection (1)(c), the employer must give written notice to the Corporation of the agreed period within 7 days after the agreement is reached.
- (3) Long service leave must not be granted for a period of less than 2 weeks.

Division 2 Payments for long service leave

50 Payments for long service leave

- (1) A registered worker who has accrued long service leave under this Act may apply to the Corporation for payment for the long service leave.
- (2) The Corporation may require the registered worker to give the Corporation information or evidence the Corporation considers necessary to determine the application.
- (3) If the Corporation is satisfied the registered worker is entitled to long service leave under this Act, the Corporation must—
 - (a) approve the application, and
 - (b) pay to the registered worker the amount payable under section 54 or 55 as soon as practicable after the application is made.

51 No double payments for long service leave

- (1) A registered worker is not entitled to be paid for a day's service that is credited to the worker in the workers register if payment for the entitlement has already been made under this or another Act or an award.
- (2) In this section—
award means an award, agreement or industrial instrument, under a law of the State or the Commonwealth, providing for payment of workers doing community service work.

52 Pro rata payments instead of long service leave in limited circumstances

- (1) Except as provided by this section, a registered worker must not be paid an amount instead of long service leave.
- (2) A registered worker who has 1,825 days of recognised service may apply to the Corporation for a pro rata payment instead of long service leave.
- (3) The Corporation may grant an application if the Corporation is satisfied—
 - (a) the worker has permanently ceased doing community service work, and
 - (b) 10 weeks, or a shorter period prescribed by the regulations, have passed since the day on which the worker permanently ceased doing community service work, and
 - (c) the worker has not been credited with service in the workers register for any days in the 10-week period or the shorter period prescribed under paragraph (b).
- (4) The Corporation may also grant an application in circumstances prescribed by the regulations.
- (5) If the Corporation grants an application, the worker is entitled to a pro rata payment instead of long service leave for the number of weeks of long service leave calculated in accordance with this part.
- (6) A deceased worker's personal representative may apply to the Corporation under subsection (2) on behalf of the deceased worker.

53 Calculating payments for long service leave entitlements

- (1) For sections 50 and 52, the amount payable to a registered worker for, or instead of, long service leave is—

- (a) for any part of the entitlement to long service leave accrued as an employee—the amount calculated in accordance with section 54, and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount calculated in accordance with section 55.
- (2) For subsection (1)—
- (a) long service leave must be taken in the reverse order in which the leave is accrued, and
 - (b) if a pro rata payment instead of leave is being made—the payment is made in relation to the leave in the order in which the leave is accrued.

54 Long service leave payments to employees

- (1) For sections 50 and 52, the amount payable to an employee for long service leave for service accrued as a registered worker is the amount calculated using the following formula—

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

where—

D means the number of days of recognised service to which the amount payable relates.

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

- (a) the most recent 2 quarters of service as a registered worker before the designated day,
 - (b) the most recent 4 quarters of service as a registered worker before the designated day,
 - (c) the most recent 20 quarters of service as a registered worker before the designated day,
 - (d) the most recent 28 quarters of service as a registered worker before the designated day.
- (2) In this section—
- designated day**, for long service leave, means the following—
- (a) for a registered worker taking long service leave—the day the leave starts,
 - (b) for a registered worker being paid pro rata instead of taking long service leave—the day the Corporation approves the application for payment.

55 Long service leave payments to contractors

- (1) For sections 50 and 52, the amount payable to a contractor who is a registered worker for long service leave for service accrued as a registered worker is the total of the following for the service—
- (a) the amount of the long service leave levy paid by the contractor to the Corporation under section 42,
 - (b) interest at the rate determined by the Corporation under subsection (2), and calculated from the date of receipt of each amount paid under section 42 until the designated day for the long service leave.
- (2) The rate of interest must—
- (a) be calculated after the end of each financial year for the previous financial year, and

- (b) take into account the expenses incurred in administering the Corporation, and
 - (c) be at least 75% of the rate of interest, expressed as a percentage, earned by the Corporation on the amount in the Fund and calculated in accordance with the regulations.
- (3) The Corporation may determine an interim rate of interest from time to time before the determination of the rate under subsection (2).
- (4) In this section—
designated day, for long service leave, means the following—
 - (a) for a registered worker taking long service leave—the day the leave starts,
 - (b) for a registered worker being paid pro rata instead of taking long service leave—the day the Corporation approves the application for payment.

Division 3 Other

56 Deemed minimum and maximum rates of pay

- (1) Despite section 54, the regulations may provide for the determination of minimum and maximum amounts for **R** for the purposes of the formula in that section.
- (2) The Minister must consult with the Committee before recommending the making of a regulation under this section.
- (3) The Committee must advise and make recommendations to the Minister on the operation of, and an amendment to or repeal of, a regulation made under this section.
- (4) If an amount of a long service leave payment to a registered worker under section 54 is, because of the operation of a regulation made under this section, less than the amount it would have been without the regulation, the Corporation must give the worker written notice that includes an explanation of the operation of the regulation.

57 Public holidays not to count as long service leave

A period of long service leave taken by a registered worker is increased by 1 day for each public holiday during the period of leave.

58 Corporation may pay if employer insolvent

- (1) This section applies if—
 - (a) the employer of a registered worker is or becomes insolvent under administration, or a Chapter 5 body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, and
 - (b) the worker has an entitlement to long service leave under this Act.
- (2) The Corporation may pay to the worker, or the deceased worker's personal representative, the difference between—
 - (a) the amount of the worker's long service leave entitlement under this Act, and
 - (b) an amount the worker, or the deceased worker's personal representative, has received from the employer for the worker's long service leave entitlement under this Act.

59 Deferral of payment for long service leave entitlement

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

60 Corporation's liability limited to long service leave

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

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

Part 7 Appeals to Committee

Division 1 General

61 Appeals

- (1) An appeal under this Act must be made within—
 - (a) 21 days after the appellant is notified of the decision appealed against, or
 - (b) another period prescribed by the regulations.
- (2) Subject to the regulations, the Committee may determine—
 - (a) the way in which appeals must be made, and
 - (b) the procedure for hearing and determining appeals.
- (3) The Committee may refer a matter that is the subject of an appeal to the Corporation for reconsideration at any time.
- (4) The Committee's determination of an appeal is taken to be the final decision of the Corporation and must be given effect to by the Corporation.
- (5) Despite subsection (4), in proceedings in a court, a plea of issue estoppel is not available in relation to an issue decided by the Committee.

62 Hearing and determination of appeals by 2 or more members

- (1) The Committee may determine that a particular appeal, or an appeal of a particular class, may be heard but not determined, or heard and determined, by a subcommittee consisting of 2 or more members of the Committee appointed by the Committee.
- (2) If an appeal is heard but not determined by a subcommittee, the determination of the appeal must be made by the Committee at a meeting at which a quorum is present.
- (3) If an appeal is heard and determined by a subcommittee, the determination of the appeal is taken to have been made by the Committee.
- (4) A subcommittee appointed by the Committee for this section must consist of—
 - (a) at least 1 member of the Committee appointed under section 8(2)(b)(i) or (ii), and
 - (b) at least 1 member of the Committee appointed under section 8(2)(b)(iii) or (iv).
- (5) The number of members on the subcommittee appointed under section 8(2)(b)(i) or (ii) must be equal to the number of members on the subcommittee appointed under section 8(2)(b)(iii) or (iv).

63 Notice of appeal decisions

The Committee must give the appellant written notice of the Committee's decision on an appeal within 14 days after the decision is made.

64 Personal representative of deceased person may appeal on person's behalf

- (1) A reference in this part to a person who has a right to appeal under this part includes a deceased person's personal representative.
- (2) In this section—

personal representative, of a deceased person, means—

 - (a) for a person who died wholly or partially intestate—a person who appears to the Committee to be entitled to obtain a grant of letters of administration of the estate of the person, and

- (b) for a person who died testate—a person who appears to the Committee to be entitled to receive the relevant payment under the will of the person.

Division 2 Rights of appeal

65 Appeal against refusal to register as employer

- (1) An applicant for registration as an employer may appeal to the Committee against a decision of the Corporation to refuse to register the applicant as an employer under section 10.
- (2) The Committee must determine the appeal by—
 - (a) if the Committee is satisfied the applicant is an employer—directing the Corporation to register the person as an employer, or
 - (b) otherwise—confirming the Corporation’s decision.

66 Appeal against refusal to register as worker

- (1) An applicant for registration of a person as a worker may appeal to the Committee against a decision of the Corporation to refuse to register the person as a worker under section 14.
- (2) The Committee must determine the appeal by—
 - (a) if the Committee is satisfied the person is a worker—directing the Corporation to register the person as a worker, or
 - (b) otherwise—confirming the Corporation’s decision.

67 Appeal against cancellation of employer’s registration

- (1) A person may appeal to the Committee against a decision of the Corporation under section 22 to cancel the person’s registration as an employer.
- (2) The Committee must determine the appeal by—
 - (a) confirming the cancellation, or
 - (b) quashing the Corporation’s decision, if the Committee is satisfied—
 - (i) for a cancellation under section 22(1)—the person is an employer and the person was registered as an employer in accordance with this Act, or
 - (ii) for a cancellation under section 22(3)—the person has not ceased engaging any workers to do community service work.

68 Appeal against cancellation of worker’s registration

- (1) A person may appeal to the Committee against a decision of the Corporation under section 19 to cancel the person’s registration as a worker.
- (2) The Committee must determine the appeal by—
 - (a) confirming the cancellation, or
 - (b) quashing the Corporation’s decision, if the Committee is satisfied—
 - (i) for a cancellation under section 19(1)—the person is a worker and the person was registered as a worker in accordance with this Act, or
 - (ii) for a cancellation under section 19(2)—the registered worker was entitled under this Act to be credited with service in the workers register during the period of 4 years immediately preceding the cancellation.
- (3) A person cannot appeal the cancellation of a worker’s registration by the Corporation under section 19(4).

69 Appeal in relation to objection about service credits

- (1) A registered worker may appeal to the Committee against a dismissal by the Corporation of an objection made by the registered worker under section 18.
- (2) The Committee must determine the appeal by—
 - (a) confirming the Corporation’s decision, or
 - (b) quashing the Corporation’s decision and determining the objection in accordance with this Act.

70 Appeal in relation to exemption from giving returns

- (1) An employer may appeal to the Committee against a decision of the Corporation to refuse to grant an exemption to the employer, or revoke an exemption granted to the employer, under section 35.
- (2) The Committee must determine the appeal by—
 - (a) directing the Corporation to grant or reinstate the exemption, or
 - (b) confirming the Corporation’s decision.

71 Appeal in relation to late payment of long service leave levies

- (1) A person who is aggrieved by a decision of the Corporation to give, or refuse to give, a direction under section 43(3) may appeal to the Committee.
- (2) The Committee must determine the appeal by—
 - (a) confirming the Corporation’s decision, or
 - (b) if the Committee considers the Corporation’s decision unreasonable having regard to the circumstances notified to the Corporation when the decision was made—giving directions to the Corporation the Committee considers appropriate.

72 Appeal against long service leave levy assessment

- (1) A person who is aggrieved by a decision of the Corporation in relation to an assessment under section 44 may appeal to the Committee.
- (2) The Committee must determine the appeal by—
 - (a) confirming the Corporation’s decision, or
 - (b) quashing the Corporation’s decision.

73 Appeal in relation to deemed minimum and maximum rates of pay

- (1) A person who has received written notice under section 56 and is dissatisfied with the calculation of the long service leave payment may appeal to the Committee.
- (2) The Committee must determine the appeal by—
 - (a) confirming the calculation of the long service leave payment, or
 - (b) setting the calculation aside and substituting a new calculation.

Part 8 Inspectors

Division 1 Preliminary

74 Definition

In this part—

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

75 Authorisation of inspectors

- (1) The Corporation may authorise a person or class of persons to be an inspector for this Act.
- (2) Subject to the terms of an inspector's authorisation, an inspector has the functions conferred or imposed on an inspector by or under this Act.
- (3) An inspector is subject to the control and direction of the Corporation.
- (4) The Corporation must issue each inspector with identification.
- (5) When exercising a function of an inspector under this Act, the inspector must, if requested to do so by a person affected by the exercise of the function, produce to the person the inspector's identification.

Division 2 Powers of entry

76 Power to enter premises

- (1) An inspector may enter premises at any time for the following purposes—
 - (a) determining whether any workers under this Act are engaged at the premises,
 - (b) determining whether there has been compliance with, or a contravention of, this Act or the regulations.
- (2) Entry may be effected under this Act by an inspector—
 - (a) with the use of reasonable force, and
 - (b) with assistance the inspector considers necessary.
- (3) This part does not empower an inspector to enter a part of premises used only for residential purposes without—
 - (a) the permission of the occupier, or
 - (b) the authority of a search warrant.

77 Search warrants

- (1) An inspector may apply to an authorised officer for the issue of a search warrant for premises if the inspector believes on reasonable grounds that—
 - (a) a provision of this Act or the regulations is being or has been contravened at the premises, or
 - (b) there is in or on the premises a matter or thing connected with an offence under this Act or the regulations.
- (2) An authorised officer to whom an application is made may, if satisfied there are reasonable grounds, issue a search warrant authorising an inspector named in the warrant to—
 - (a) enter the premises, and

- (b) exercise a function of an inspector under this part.
- (3) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 5, Division 4 applies to a search warrant issued under this section.
- (4) In this section—
authorised officer has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

78 Powers to inspect and seize things

- (1) An inspector may, on premises lawfully entered, do anything the inspector considers necessary for the purposes of this part, including the following—
 - (a) carrying out surveillance activities,
 - (b) examining and inspecting the premises or an article or thing on the premises,
 - (c) making examinations and inquiries the inspector considers necessary,
 - (d) requiring records and other documents required to be kept for this Act or the regulations to be produced for inspection,
 - (e) examining and inspecting records or other documents,
 - (f) copying records or other documents,
 - (g) seizing a thing if the inspector has reasonable grounds for believing the thing is connected with an offence under this Act or the regulations,
 - (h) doing anything else the inspector is empowered to do under this part.
- (2) The power to seize a thing connected with an offence includes a power to seize—
 - (a) a thing for or with which the offence has been committed, and
 - (b) a thing providing evidence of the commission of the offence, and
 - (c) a thing used for the purposes of committing the offence.
- (3) A person may be required to produce a document under this part only if the document is—
 - (a) in the person's possession, or
 - (b) within the person's power to obtain lawfully.
- (4) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

79 Dealing with seized things

- (1) If an inspector seizes a thing on premises under section 78, the inspector must give the person apparently in charge of the premises a written receipt for the seized thing.
- (2) An inspector may keep a thing seized under section 78 until the completion of proceedings in which the thing may be evidence.
- (3) A record may be kept under subsection (2) only if the person from whom the record was seized is, within a reasonable time after the seizure, given a copy of the record certified by the inspector as a true copy.
- (4) Subsection (2) ceases to have effect in relation to a thing seized if, on the application of a person affected by the seizure, the court in which proceedings referred to in that subsection are commenced so orders.

80 Assistance to be given to inspectors

- (1) An inspector may, by written notice to the owner or occupier of premises, require the owner or occupier to give the reasonable assistance specified in the notice for the

purposes of exercising the inspector's functions under this part in relation to the premises.

- (2) The notice may specify—
 - (a) the time within which the assistance must be given, and
 - (b) the way in which the assistance must be given.

Division 3 Powers to require information

81 Power to require production of employee records

- (1) An inspector may, by written notice given to an employer or other person who the inspector reasonably believes has possession, custody or control of the employer's records kept under section 39, require the employer or person to produce specified records at a specified time and place.
- (2) An inspector may—
 - (a) inspect a record produced in response to the notice, and
 - (b) take copies of or extracts from, or make notes from, a record produced in response to the notice.
- (3) An employer does not contravene a provision of this Act if the employer is unable to comply with the provision because an inspector kept possession of a record under this section or section 82.

82 Power to take possession of records to be used as evidence

- (1) An inspector to whom a record is produced under section 81 may take possession of the record if the inspector considers it necessary for the purpose of obtaining evidence or protecting evidence from destruction.
- (2) If an inspector takes possession of a record under this section, the record may be kept by the inspector until the completion of proceedings, including proceedings on appeal, in which the record may be evidence.
- (3) The person from whom the record was taken must, within a reasonable time after the record is taken, be given a copy of the record certified by an inspector as a true copy.
- (4) A copy of a record given under this section is, as evidence, of equal validity to the record of which it is certified to be a copy.

Division 4 Other

83 Offences

- (1) A person must not, without reasonable excuse, fail to comply with a requirement made of the person by an inspector under this part.
Maximum penalty—50 penalty units.
- (2) A person must not wilfully obstruct, delay or hinder an inspector in the exercise of the inspector's functions under this part.
Maximum penalty—50 penalty units.
- (3) A person must not refuse to allow an inspector to enter premises the inspector may lawfully enter under this part.
Maximum penalty—50 penalty units.

84 Provisions relating to requirements to give records or information or answer questions

- (1) A person is not guilty of an offence of failing to comply with a requirement under this part to give records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this part to give records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, information or an answer given by a natural person in compliance with a requirement under this part is not admissible in evidence against the person in criminal proceedings, except proceedings for an offence under this part, if—
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to giving the information or answer on the ground that it might incriminate the person.
- (4) A record given by a person in compliance with a requirement under this part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record, information or answer given in compliance with a requirement under this part is not inadmissible on the ground that the record, information or answer—
 - (a) had to be given, or
 - (b) might incriminate the person.
- (6) This section extends to a requirement under this part to state a person's name and address.

Part 9 Relationship to other laws

85 Definition

In this part—

relevant arrangement means the following—

- (a) the *Long Service Leave Act 1955*,
- (b) a corresponding law,
- (c) a law prescribed by the regulations,
- (d) an enterprise agreement that provides for long service leave benefits more favourable than the benefits provided for by this Act.

86 Registered workers eligible for benefits under other arrangements

- (1) This section applies if a registered worker is eligible for both—
 - (a) long service benefits under this Act, and
 - (b) long service benefits accrued after the commencement of this Act under a relevant arrangement.
- (2) A registered worker must—
 - (a) elect to take long service benefits under this Act or the relevant arrangement, and
 - (b) give the Corporation written notice of the election and the engagement period for which the election is made.
- (3) If a registered worker elects to take long service benefits under the relevant arrangement, the Corporation must remove the worker's credits for the engagement period from the workers register.
- (4) The Corporation must keep a record of the removed credits.

87 Reimbursement of employer

- (1) This section applies if—
 - (a) a registered worker elects under section 86 to take long service benefits under a relevant arrangement, and
 - (b) an employer pays the registered worker an amount under the relevant arrangement.
- (2) The employer may apply to the Corporation for reimbursement of an amount paid by the employer to the registered worker under the relevant arrangement.
- (3) The Corporation must reimburse the amount paid under the relevant arrangement, less any long service leave levy or other amount outstanding that is payable by the employer to the Corporation under this Act, if the Corporation is satisfied the amount paid by the employer was properly paid by the employer under the relevant arrangement.
- (4) The regulations may prescribe circumstances in which a person or body is taken to be an employer for the purposes of this section.

88 Reimbursement for certain payments under Long Service Leave Act 1955

- (1) This section applies if a worker who is an employee—
 - (a) has an entitlement to long service leave with an employer that was accrued under the *Long Service Leave Act 1955*, and
 - (b) has not accrued an entitlement with an employer under this Act.

- (2) The employer may apply to the Corporation for reimbursement of the amount of long service leave payable to the employee for the part of the entitlement accrued under the *Long Service Leave Act 1955* during an engagement period in which the employee was a registered worker under this Act.
- (3) The Corporation must pay the employer the amount if the Corporation is satisfied the amount paid by the employer was properly paid by the employer under the *Long Service Leave Act 1955*.
- (4) If the Corporation makes a payment under subsection (3), the Corporation must remove the employee's credits for the engagement period from the workers register.

Part 10 Reciprocal arrangements

89 Definition

In this part—

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

90 Reciprocal agreements for corresponding laws

- (1) The Minister administering this Act may enter into an agreement with a Minister of another State or Territory who administers a corresponding law in relation to payment of long service leave to people doing community service work.
- (2) Without limiting subsection (1), the agreement may provide for the following—
 - (a) payments for, or instead of, long service leave,
 - (b) the exchange of information about service credits and entitlements to long service benefits between the Corporation and the reciprocal authority under the corresponding law,
 - (c) anything else in relation to long service benefits the Minister administering this Act considers appropriate.

91 Payment by Corporation on reciprocal authority's behalf

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

92 Payments by reciprocal authority on Corporation's behalf

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

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

where—

D means the number of days of recognised service to which the payment relates.

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

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

Part 11 Enforcement

Division 1 Proceedings for offences

93 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.
- (2) The provisions of the *Industrial Relations Act 1996* relating to appeals from, and the stating of a case by, the Local Court to the Industrial Relations Commission in Court Session apply to proceedings before the Local Court for offences against this Act or the regulations.
- (3) Proceedings for an offence against this Act or the regulations may be instituted within 6 years after the offence is alleged to have been committed.

94 Penalty notices

- (1) An inspector may issue a penalty notice to a person if it appears to the inspector that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note— The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of another provision of, or made under, this or another Act relating to proceedings that may be taken in relation to offences.

95 Offences by corporations

- (1) If a corporation contravenes a provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision as provided by subsection (1) whether or not the corporation has been proceeded against or convicted under the provision.
- (3) This section does not affect the liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

96 Recovery of charges by Corporation

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

97 Orders to make levy payments

If the Local Court convicts a person, or finds the person guilty, of an offence against section 10(2), the Local Court may, in addition to imposing a penalty on the person, order the person to pay the Corporation the amount that would have been payable by the person under section 42(1) if the person had complied with this Act.

Division 2 Evidentiary matters

98 Certificate as to payment of levies

- (1) A certificate purportedly issued by the Secretary or a prescribed person certifying a matter specified in subsection (2) is—
 - (a) admissible in evidence in any proceedings, and
 - (b) evidence of the matters stated in the certificate.
- (2) The following matters may be certified in a certificate issued under this section—
 - (a) a specified amount of long service leave levy was paid to the Corporation or an authorised agent of the Corporation on a specified date,
 - (b) a specified amount of long service leave levy was not paid to the Corporation during a specified period, or
 - (c) no amount of long service leave levy was payable to the Corporation.
- (3) In this section—

prescribed person means a person holding or acting in an office or position prescribed by the regulations.

99 Authentication of certain documents by Corporation

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

Part 12 Miscellaneous

100 Applications and returns to Corporation must be in approved form

For this Act, an application or return to the Corporation must be made in the form approved by the Corporation.

101 Service of documents

- (1) A document required or authorised by this Act or the regulations to be given to a person may be given by the following methods—
 - (a) for an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of the kind,
 - (c) for an individual who has not specified an address—by post to the residential or business address of the person last known to the person giving the document,
 - (d) for a corporation—by post to the registered office or other office of the corporation or by leaving the document at the office with a person who is apparently more than 16 years of age,
 - (e) by email to an email address specified by the person for the service of documents of the kind,
 - (f) by electronic communication to an address or location specified by the person for the service of documents of the kind,
 - (g) by another method authorised by the regulations for the service of documents of the kind.
- (2) This section does not affect the operation of a provision of a law or of the rules of a court authorising a document to be given to or served on a person by another method.

102 Exchange of information

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

relevant agency includes the following—

 - (a) an agency of the State, the Commonwealth or another State or Territory, including an agency that exercises functions under legislation in relation to long service schemes or employers or employees in relation to long service leave,
 - (b) a local council,

- (c) a person or body that exercises functions, in the public interest, to protect the interests of long service schemes, employers or employees,
- (d) a person or body prescribed by the regulations.

103 False statements

A person must not make a statement, or record a matter, that the person knows to be false or misleading in a material particular in—

- (a) an application, certificate, claim, appeal, return or record made, given or maintained under or for this Act or the regulations, or
- (b) information given—
 - (i) in purported compliance with a requirement made of the person under this Act or the regulations, or
 - (ii) for the purposes of obtaining an exemption, concession, benefit or advantage under this Act or the regulations.

Maximum penalty—50 penalty units.

104 Disclosure of information

- (1) A person must not disclose relevant information unless the disclosure is made—
 - (a) with the consent of the person from whom the relevant information was obtained, or
 - (b) in connection with the administration or execution of this Act or a related Act, or
 - (c) for the purposes of legal proceedings arising out of this Act or a related Act, or a report of the proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) with other lawful excuse.

Maximum penalty—50 penalty units.

- (2) The Corporation may disclose relevant information relating to an employer's compliance with this Act to—
 - (a) a NSW Government agency, for the purposes of the exercise of the agency's functions under an Act, and
 - (b) a Commonwealth Government agency, for the purposes of the exercise of the agency's functions under a Commonwealth Act.

- (3) In this section—

related Act means an Act, other than this Act, that confers or imposes functions on the Corporation.

relevant information means information obtained in connection with the administration or execution of this Act or a related Act.

105 Protection from personal liability

- (1) A protected person, or an individual acting under the direction of a protected person, is not personally subject to civil liability for anything done or omitted to be done—
 - (a) in good faith, and
 - (b) for the purposes of exercising functions under this Act or the regulations.
- (2) The liability instead attaches to the Crown.
- (3) In this section—

civil liability includes an action, claim or demand.

protected person means the following—

- (a) a member of staff of the Corporation,
- (b) a member of the Committee.

106 Regulations

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

107 Review of Act

- (1) The Minister must review this Act to determine whether—
 - (a) the policy objectives of the Act remain valid, and
 - (b) the terms of the Act remain appropriate for securing the policy objectives.
- (2) The review must be undertaken as soon as possible after a period of 8 years from the commencement of this Act.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 8 years.

Schedule 1 Community services

section 4(2)

Aboriginal and Torres Strait Islander community services
Accommodation support services
Alcohol and other drug services
Child safety and support services
Community advocacy services, including education and other services provided by peak bodies
Community development services
Community care services
Community legal services
Community mental health support services
Community recreation services
Community transport services
Community welfare services
Disability supports and services
Employment services
Family and domestic violence services
Family support services
Financial counselling services
Foster care services
Homelessness support services
Lesbian, gay, bisexual, transgender and intersex services
Migrant and multicultural support services
Neighbourhood and local community services
Out-of-home care services
Respite care services
Settlement and refugee services
Sexual assault services
Social housing services
Social work
Women's health support services
Youth justice services
Youth support services

Schedule 2 Members and procedure of Committee

section 8

1 Definitions

In this schedule—

appointed member means a member other than the Chairperson of the Committee.

member means a member of the Committee.

2 Terms of office of appointed members

- (1) Subject to this schedule and the regulations, an appointed member holds office for the term, not more than 3 years, specified in the instrument of appointment.
- (2) An appointed member is eligible, if otherwise qualified, for re-appointment.

3 Part-time appointments

Appointed members hold office as part-time members.

4 Remuneration and reimbursement

- (1) An appointed member is entitled to be paid the remuneration, including travelling and subsistence allowances, determined by the Minister.
- (2) A body that nominated an appointed member is entitled to be reimbursed for time the appointed member spends carrying out the member's functions, as determined by the Minister.

5 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the appointed member—
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by written instrument addressed to the Minister, or
 - (d) is removed from office by the Minister under subsection (2), or
 - (e) is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to the appointed member, unless the appointed member is—
 - (i) on leave granted by the Minister, or
 - (ii) excused by the Minister for having been absent from the meetings, or
 - (f) becomes personally insolvent, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or
 - (i) is convicted outside New South Wales of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more.
- (2) The Minister may remove an appointed member from office.

6 Filling of vacancy in office of appointed member

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

7 Acting appointed members

A person must not be appointed by the Minister to act in the office of an appointed member during the illness or absence of the appointed member or a vacancy in office unless the person is nominated by the same body that nominated the appointed member for membership of the Committee.

Note— Under the *Interpretation Act 1987*, section 47, the power to appoint a person to an office includes the power to appoint a person to act in the office in certain circumstances.

8 Disclosure of pecuniary and other interests

- (1) This section applies if—
 - (a) an appointed member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a Committee meeting, and
 - (b) the interest appears to raise a conflict with the proper performance of the appointed member's duties in relation to the consideration of the matter.
- (2) The member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Committee meeting.
- (3) Particulars of a disclosure made under this section must be recorded by the Committee and made available to a person on request.
- (4) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person if the Committee member has previously disclosed that the Committee member—
 - (a) is a member of, or employed by, the company or body, or
 - (b) is a partner of, or employed by, the person, or
 - (c) has some other specified interest relating to the company, body or person.
- (5) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Minister or Committee otherwise determines—
 - (a) be present during a deliberation of the Committee about the matter, or
 - (b) take part in a decision of the Committee about the matter.
- (6) A member who has a direct or indirect pecuniary or other interest in a matter to which a disclosure relates must not—
 - (a) be present when the Committee is making a determination under subsection (5), or
 - (b) take part in the making of the determination.
- (7) A contravention of this section does not invalidate a decision of the Committee.

9 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.
- (2) If, by or under an Act, provision is made for either of the following, the provision does not operate to disqualify the person from holding the office and also the office of an appointed member, or from accepting and retaining any remuneration payable to the person under this Act as an appointed member—
 - (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office,
 - (b) prohibiting the person from engaging in employment outside the duties of that office.

10 General procedure

The procedure for the calling of Committee meetings and conducting business at Committee meetings must, subject to this Act and the regulations, be determined by the Committee.

11 Quorum

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

12 Presiding member

- (1) The Chairperson of the Committee must preside at a Committee meeting.
- (2) If the Chairperson is absent from a Committee meeting, a person elected by the members present at the meeting must preside at the meeting.
- (3) The presiding member has a deliberative vote and, if there is an equality of votes, has a second or casting vote.

13 Voting

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

14 Transaction of business outside meetings or by electronic means

- (1) The Committee may, if the Committee thinks fit, transact its business—
 - (a) by the circulation of papers, by email or other electronic means, among all members, or
 - (b) at a meeting at which all or some members participate by telephone or other electronic means, but only if a member who speaks on a matter at the meeting can be heard by the other members.
- (2) If the Committee transacts its business by the circulation of papers under subsection (1)(a), a written resolution approved in writing by a majority of the members is taken to be a decision of the Committee made at a Committee meeting.
- (3) The Chairperson of the Committee and other members have the same voting rights as at an ordinary Committee meeting for—
 - (a) a meeting held in accordance with subsection (1)(b), or
 - (b) the approval of a resolution under subsection (2).
- (4) A resolution approved under subsection (2) must be recorded in the minutes of the Committee meeting.

15 First meeting

The Minister may call the first meeting of the Committee.

Schedule 3 Dictionary

section 3

appointed member, for Schedule 2—see Schedule 2, section 1.

Committee means the Community Services Sector Long Service Leave Committee constituted by section 8.

community service—see section 4(2).

community service work—see section 4(1).

contractor means a worker specified in section 5(1)(b).

Corporation means the Long Service Corporation constituted under the *Long Service Corporation Act 2010*.

corresponding law means a law of another State or Territory that—

- (a) makes provision in relation to long service leave, and
- (b) is declared by the regulations to be a corresponding law.

day, in relation to a worker, means 24 hours or another period prescribed by the regulations.

employee means a worker specified in section 5(1)(a).

employer—see section 6.

employers register means the register of employers kept by the Corporation under section 9.

engagement period—see section 28.

financial year means a year ending on 30 June.

foundation worker—see section 15.

inspector means a person authorised as an inspector by the Corporation under section 75.

long service leave levy means the long service leave levy payable by an employer or contractor under section 42.

member, for Schedule 2—see Schedule 2, section 1.

ordinary remuneration, for a person, means the amount paid or payable to the person for community service work, other than amounts for the following—

- (a) overtime,
- (b) expenses incurred by the person,
- (c) the use of materials, equipment or a motor vehicle provided by the person.

personal representative, of a deceased person, means, other than in section 64—

- (a) for a person who died wholly or partially intestate—a person who appears to the Corporation to be entitled to obtain a grant of letters of administration of the estate of the person, and
- (b) for a person who died testate—a person who appears to the Corporation to be entitled to receive the relevant payment under the will of the person.

premises, for Part 8—see section 74.

reciprocal authority, for Part 10—see section 89.

recognised service, for a registered worker, means the total number of days of service credited to the worker in the workers register.

registered employer means an employer who is registered under Part 2, Division 1.

registered worker means a worker who is registered under Part 2, Division 2.

relevant arrangement, for Part 9—see section 85.

return period means—

- (a) a 3-month period, ending at the end of 31 March, 30 June, 30 September or 31 December in a year, during which a worker does community service work, or

(b) another period prescribed by the regulations.

Secretary means the Secretary of the Department in which this Act is administered.

service, for a registered worker, means community service work done by the registered worker.

worker—see section 5.

Note— A worker is an employee or contractor.

workers register means the register of workers kept by the Corporation under section 13.

worker's registration day—see section 16.

Schedule 4 Amendment of other legislation

4.1 Industrial Relations Act 1996 No 17

Section 382 Jurisdiction of Chief and other Industrial Magistrates

Insert after “*Building and Construction Industry Long Service Payments Act 1986*” in section 382(1)—

Community Services Sector (Portable Long Service Leave) Act 2024

4.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order—

Community Services Sector (Portable Long Service Leave) Act 2024, section 77

4.3 Long Service Corporation Act 2010 No 123

[1] Section 3 Definitions

Insert at the end of section 3(1), definition of *Fund*, paragraph (b)—

, and

- (c) the Community Services Sector Long Service Leave Fund referred to in section 13A.

[2] Section 9 Functions generally

Insert after section 9(1)(b)—

- (b1) the *Community Services Sector (Portable Long Service Leave) Act 2024*, and

[3] Section 13A

Insert after section 13—

13A Community Services Sector Long Service Leave Fund

- (1) The Corporation must establish, administer and control a fund called the Community Services Sector Long Service Leave Fund.
- (2) The following must be paid into the Fund—
 - (a) the long service leave levies paid under the *Community Services Sector (Portable Long Service Leave) Act 2024*,
 - (b) money borrowed by the Corporation for the purposes of the *Community Services Sector (Portable Long Service Leave) Act 2024*,
 - (c) the proceeds of investment of the Fund,
 - (d) other amounts received by the Corporation in the administration of the *Community Services Sector (Portable Long Service Leave) Act 2024*.
- (3) The following must be paid from the Fund—
 - (a) the long service leave payments provided for by the *Community Services Sector (Portable Long Service Leave) Act 2024*,

- (b) the expenses incurred in the administration of this Act and the *Community Services Sector (Portable Long Service Leave) Act 2024* and the management of the Fund,
- (c) other payments authorised by the *Community Services Sector (Portable Long Service Leave) Act 2024* to be made from the Fund.

[4] Section 16 Actuarial investigation of Funds

Insert “the *Community Services Sector (Portable Long Service Leave) Act 2024* or” after “under” in section 16(2)(b).

4.4 Long Service Leave Act 1955 No 38

[1] Section 4 Long service leave

Omit section 4(5A) and (5B). Insert instead—

- (5A) An employer must not give long service leave to a person who is a registered worker under one of the following Acts unless the registered worker applies to the employer for the long service leave—
 - (a) the *Building and Construction Industry Long Service Payments Act 1986*,
 - (b) the *Community Services Sector (Portable Long Service Leave) Act 2024*,
 - (c) the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.
- (5B) An employer must not pay a registered worker under an Act specified in subsection (5A) a payment in relation to long service leave unless the registered worker applies to the employer for the payment.

[2] Sections 4A and 4B

Omit sections 4A–4C. Insert instead—

4A Notification of payments

- (1) This section applies to an employer under the following Acts—
 - (a) the *Building and Construction Industry Long Service Payments Act 1986*,
 - (b) the *Community Services Sector (Portable Long Service Leave) Act 2024*,
 - (c) the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.
- (2) An employer who intends to make a payment by way of a benefit under this Act to or in relation to an employee under an Act specified in subsection (1) must notify the Long Service Corporation before making the payment.

4B Benefits under this Act and other portable long service leave scheme legislation

- (1) This section applies to an employee who—
 - (a) is registered as a worker under—
 - (i) the *Community Services Sector (Portable Long Service Leave) Act 2024*, or

- (ii) the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*, and
 - (b) has elected under that Act to take long service leave benefits under that Act for a period stated by the employee.
- (2) The employee's election does not prevent the employee from receiving benefits under this Act.
- (3) However, the employee is not entitled to a benefit under this Act for a period for which the employee received a benefit under—
 - (a) the *Community Services Sector (Portable Long Service Leave) Act 2024*, or
 - (b) the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.

4.5 Workers Compensation Act 1987 No 70

Section 174 Records relating to wages, contracts etc to be kept and supplied

Insert “, the *Community Services Sector (Portable Long Service Leave) Act 2024*” after “*Building and Construction Industry Long Service Payments Act 1986*” in section 174(9), definition of *wages*, paragraph (b1).