South Australia

Portable Long Service Leave Act 2024

An Act to establish a scheme for the portability of long service leave in the community services sector, to provide for the ability to extend the scheme to employees in other sectors, to make consequential amendments to the *Construction Industry Long Service Leave Act 1987* and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Portable Long Service Leave Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act—

allowable absence, in relation to a designated worker, means an absence of the worker from work, being an absence of a kind prescribed by the regulations to be an allowable absence;

approved form means a form approved by the CEO;

authorised officer means a person appointed as an authorised officer under section 63;

CEO means the chief executive officer of each industry board under section 17(1);

civil penalty—see section 56;

community services are services—

(a) that qualify under Schedule 2; or

(b) that are prescribed by the regulations;

community services sector means the area of work within the community that involves the provision of community services;

Construction Industry Board means the Construction Industry Long Service Leave Board established under the *Construction Industry Long Service Leave Act 1987*;

contract of service includes a contract of training;

corresponding law means a law of another State, or of a Territory or the Commonwealth, prescribed by the regulations to be a corresponding law;

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

designated worker means a person to whose employment this Act applies (see section 5) and includes a former designated worker;

director of a body corporate includes—

(a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

effective service means a period of service as a designated worker credited under this Act;

employer means a person by whom a designated worker is employed;

industry board means a board established under Schedule 1;

industry fund—see section 41;

levy includes an amount assessed by an industry board under section 50;

Maximum civil penalty— see section 56;

ordinary weekly pay—see subsection (4);

preservation period means—

(a) in reference to a person who has an effective service entitlement of less than 60 months—24 months; or

(b) in reference to a person who has an effective service entitlement of 60 months or more—36 months;

public sector agency means—

(a) an administrative unit under the *Public Sector Act 2009* (including the Chief Executive of such an administrative unit); or

(b) an agency or instrumentality of the Crown;

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

(a) 1 January;

(b) 1 April;

(c) 1 July;

(d) 1 October;

registered employer means a person registered as an employer under Part 3 Division 1;

relevant date means the date as at which a person's ordinary weekly pay is to be determined;

relevant designated sector—see section 8(1)(a);

relevant industry board means—

(a) in relation to a designated worker—the industry board for the designated sector that applies to the worker in the particular circumstances; or

(b) in relation to an employer in a designated sector—the industry board for the designated sector;

return period means each quarter that constitutes a return period under section 49.

(2) For the purposes of this Act—

(a) a reference to the industry board for a designated sector is a reference to the industry board constituted in relation to the sector; and

(b) a reference to the designated sector of an industry board is a reference to the designated sector in relation to which the board is constituted.

(3) For the purposes of this Act, a person will be taken to have worked for a day if the person spends at least the prescribed number of consecutive hours engaged in employment to which this Act applies during any 24 hour period.

(4) Subject to this Act, a person's ordinary weekly pay will be an amount determined by averaging the person's weekly earnings as a designated worker over the period of 3 years immediately preceding the relevant date, subject to the following qualifications:

(a) a week in which the person did not work as a designated worker must be disregarded;

(b) if the person has not worked as a designated worker at all during the period of 12 months immediately preceding the relevant date, the person's ordinary weekly pay will be taken to be an amount determined by averaging the person's weekly earnings as a designated worker over the period of 3 years immediately preceding the end of the last return period in which the person worked in the relevant designated sector;

(c) the regulations may—

(i) specify payments made to or for the benefit of a designated worker that must be included for the purposes of any determination or calculation under this subsection; and

(ii) specify payments made to or for the benefit of a designated worker that must be excluded for the purposes of any determination or calculation under this subsection;

(d) if, but for this paragraph, a person's ordinary weekly pay would be less than an amount prescribed by the regulations, the person's ordinary weekly pay will be fixed at that amount.

(5) Unless otherwise specified, ordinary weekly pay will be determined as at the end of the last completed return period under this Act.

4—Determination of ordinary weekly pay in certain circumstances

(1) If at any time it appears to the industry board for a designated sector that a designated worker's ordinary weekly pay calculated in accordance with this Act is—

(a) excessive; or

(b) insufficient,

by reason of—

(c) the nature of the work performed by the designated worker at any time material to the calculation; or

(d) the remuneration that was payable to the designated worker in respect of any work performed by the designated worker at any time material to the calculation,

the board may, by written notice to the designated worker and the designated worker's employer (if any), inform the designated worker (or their personal representative) and the employer that the board proposes to determine the designated worker's ordinary weekly pay under this Act to be a different amount.

(2) A notice under subsection (1) must specify a time within which the designated worker (or their representative) and the employer may make written submissions to the industry board that the designated worker's ordinary weekly pay should be an amount different to the amount proposed by the board.

(3) In making a determination under this section an industry board must take into account any written submission received within the time specified under subsection (2) and may otherwise inform itself in such manner as it thinks fit, but except as provided by this section an industry board is not required to give to any person notice of or an opportunity to answer or to be heard in relation to any matter taken into account by the board in making the determination.

(4) An industry board must cause notice of its determination under this section to be served on the designated worker (or their personal representative) and on the designated worker's employer (if any).

(5) The notice must include a statement of the grounds on which the determination has been made.

(6) If an industry board makes a determination of a designated worker's ordinary weekly pay under this section, that determination will prevail over any amount that would otherwise constitute the designated worker's ordinary weekly pay under this Act.

5—Application of Act

(1) This Act applies to a person's employment if the person—

(a) is engaged under a contract of service in the community services sector to—

(i) perform community services; or

(ii) support the provision of community services; or

(b) is engaged under a contract of service in a designated sector to—

(i) perform services prescribed as being part of the sector; or

(ii) support the provision of services prescribed as being part of the sector.

(2) The following provisions apply in connection with subsection (1)(a)(ii):

(a) the person must work in supporting the provision of community services for a proportion of at least one-half of the time when they work for the employer during any return period for the Act to apply to their employment in respect of that return period;

(b) an employer may decide to register a person as a designated worker, and pay a levy in respect of that person, despite the fact that paragraph (a) does not apply and then, once the person is so registered, subsection (1)(a)(ii) will apply to that employment while the person is engaged under a contract of employment described in that paragraph.

(3) Part 3, Part 4 and Part 6 do not apply to a person's employment (and consequently the person is not a designated worker for the purposes of those Parts) if the person's employer is a body corporate and the person is a director of the body corporate.

(4) Subsection (3) does not limit the operation of section 57.

(5) This Act does not apply in relation to employment by—

(a) a public sector agency; or

(b) a council; or

(c) a prescribed employer or an employer of a prescribed class.

(6) Subsection (5)(a) does not apply in relation to employment within the ambit of a notice under section 6.

(7) If a person's employer is not a registered employer due to a determination of an industry board under section 7, this Act does not apply in relation to the employment of the person in a designated sector until the employer becomes a registered employer.

6—Extension of Act to government employees

(1) The Minister may, by notice in the Gazette, apply this Act to employment in a specified public sector agency that constitutes the performance of work in a particular designated sector.

(2) The Minister may—

(a) limit the application of the Act under subsection (1) to—

(i) specified classes of workers; or

(ii) specified classes of work; and

(b) vary or revoke a notice under subsection (1) by further notice in the Gazette.

7—Delayed participation in scheme

(1) An industry board may determine that an employer, or an employer of a specified class, is not required to be registered under this Act in relation to its designated sector until—

(a) a date specified by the board; or

(b) the occurrence of an event specified by the board; or

(c) the employer falls within a category of employer specified by the board.

(2) A determination under subsection (1) may be made—

(a) on application by an employer; or

(b) on the own initiative of the industry board.

(3) An industry board may, pending making a decision on an application under subsection (2), exempt an employer from the requirement to be registered under this Act.

(4) A determination under this section—

(a) may be made subject to conditions specified by the industry board; and

(b) may include ancillary provisions that may be expedient or considered by the industry board to be appropriate in the circumstances; and

(c) has effect according to its terms.

(5) An industry board may vary a date specified under subsection (1)(a) by a subsequent determination.

(6) Until the employer is registered, this Act will not apply to a person's employment with that employer.

8—Act applies according to particular sector

(1) This Act—

(a) applies to a designated worker in respect of service in a particular designated sector at a particular time or in a particular circumstance or case (the ***relevant designated sector***); and

(b) insofar as a designated worker may work in more than 1 designated sector, applies to the employment of the designated worker in 1 designated sector in a separate and distinct manner to the employment of the designated worker in another designated sector.

(2) Accordingly—

(a) a reference to effective service, as it relates to a designated worker, is a reference to the worker's work in the relevant designated sector; and

(b) a reference to being engaged in employment is a reference to employment in the relevant designated sector; and

(c) a reference to working as a designated worker is a reference to working in the relevant designated sector; and

(d) a reference to not being a designated worker during a particular period is a reference to not being a designated worker in the relevant designated sector; and

(e) a designated worker does not have continuity of employment if the worker moves from 1 designated sector to another (unless the designated worker continues to work for the same employer); and

(f) a designated worker's entitlement to long service leave, or a payment on account of long service leave, is determined according to the worker's effective service entitlement in the relevant designated sector.

(3) This section applies subject to any contrary intention made by this Act.

Part 2—Industry boards

Division 1—Corporate provisions and governance

9—Key features of industry boards

(1) An industry board—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) has all the powers of an individual that are capable of being exercised by a body corporate; and

(d) has the functions assigned to the board under this Act.

(2) An industry board is subject to direction by the Minister.

(3) A direction given by the Minister under subsection (2) must be in writing.

(4) An industry board must cause a direction given by the Minister to be published in its next annual report.

10—Constitution of industry boards

(1) An industry board consists of 7 members, appointed by the Minister, of whom—

(a) 1 will be a person appointed as the presiding member of the board; and

(b) 3 will be persons appointed after the Minister has taken into account the recommendations of 1 or more employer organisations, to represent the interests of employers in the designated sector in relation to which the board is constituted; and

(c) 3 will be persons appointed after the Minister has taken into account the recommendations of 1 or more employee organisations, to represent the interests of employees in the designated sector in relation to which the board is constituted.

(2) The Minister may appoint a suitable person to be a deputy of a member of an industry board and the person may act as a member of the board—

(a) in the absence from the duties of office of the member for whom the person has been appointed as deputy; or

(b) if the office of the member for whom the person has been appointed as deputy becomes vacant—until the vacancy is filled by the Minister.

(3) A deputy member is to be appointed after taking into account recommendations from employer or employee organisations in the same way as a member of an industry board is appointed.

(4) If—

(a) the presiding member is absent from the duties of office or the office of the presiding member is vacant; and

(b) there is no deputy to act as the presiding member under subsection (2),

the remaining members of the industry board may appoint one of their number to act as the presiding member as required (and may revoke any such appointment at any time).

11—Terms and conditions of membership

(1) A member of an industry board will be appointed on conditions determined by the Minister and for a term, not exceeding 5 years, specified in the instrument of appointment and, on the expiration of a term of appointment, is eligible for reappointment.

(2) The Minister may remove a member of an industry board from office—

(a) for breach of, or noncompliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily; or

(d) if the member was recommended for appointment on account of being an officer or employee of an employer organisation or an employee organisation and the member has ceased to be such an officer or employee.

(3) The office of a member of an industry board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence or is sentenced to imprisonment for an offence; or

(e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

(f) is removed from office under subsection (2).

(4) A member of an industry board whose term of office expires may continue to act as a member until a fresh appointment is made.

12—Remuneration

(1) A member of an industry board is entitled to remuneration, allowances and expenses determined or approved by the Governor.

(2) Remuneration, allowances and expenses payable under subsection (1) will be paid out of the industry fund established by the industry board under Part 5 Division 1.

13—Proceedings at meetings

(1) Subject to this Act, a quorum of an industry board consists of 4 members.

(2) A meeting of an industry board will be chaired by the presiding member or, in the presiding member's absence, by a member appointed under section 10(4) or, if no such appointment has been made or that member is absent, by a member chosen from amongst their own number by the members present.

(3) An industry board must have accurate minutes kept of its meetings.

(4) A decision carried by a majority of the votes cast by members of the board at a meeting is a decision of the board.

(5) Each member present at a meeting has 1 vote on any question arising for decision and the member presiding at the meeting may exercise a casting vote if the votes are equal.

(6) A conference by telephone or other electronic means between the members of an industry board will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the board for the purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

(7) A proposed resolution of an industry board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

(a) notice of the proposed resolution is given to all members of the board in accordance with procedures determined by the board; and

(b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.

(8) Subject to this Act, an industry board may determine its own procedures.

14—Conflict of interest

A member of an industry board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the designated sector in relation to which the board is constituted generally, or a substantial section of those engaged in or associated with the designated sector.

15—Validity of acts and decisions

An act or decision of an industry board is not invalid by reason only of a vacancy in its membership or on the ground of a defect in the appointment of a member.

Division 2—Functions

16—Functions

An industry board has the following functions:

(a) to take responsibility for the administration of the portable long service leave scheme as it applies in relation to the members of the designated sector in relation to which it is constituted;

(b) to provide educational and awareness programs to members of the designated sector in relation to which it is constituted to encourage compliance with this Act and to ensure that designated workers receive their entitlements under this Act;

(c) to give advice and make recommendations to the Minister about—

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

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

(d) to carry out any other functions assigned to the board under this Act or by the Minister.

Division 3—Staff and facilities

17—Chief executive officer

(1) The chief executive officer of the Construction Industry Board is the chief executive officer of each industry board.

(2) Subject to any decision, determination or policy of the industry board, the CEO is responsible to an industry board for—

(a) managing the board's business efficiently and effectively; and

(b) supervising the staff engaged in the work of the board.

18—Staff

(1) The staffing arrangements for an industry board will be determined by the board.

(2) A staffing arrangement under subsection (1) may provide for 1 or more of the following:

(a) the industry board engaging staff as employees or as contractors of the board;

(b) with the agreement of the Construction Industry Board—the industry board making use of the staff of that board;

(c) with the agreement of a public sector agency—the industry board making use of the staff of the public sector agency.

19—Facilities

An industry board may, by arrangement with—

(a) the Construction Industry Board; or

(b) a public sector agency,

make use of the services or facilities of that board or public sector agency.

Division 4—Related matters

20—Delegation

(1) An industry board may delegate any of its functions—

(a) to a member of the board; or

(b) to the chief executive officer of the board; or

(c) to a committee of the board; or

(d) to a specified body or person (including a person for the time being holding or acting in a specified office or position).

(2) A delegation under this section—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the board to act in any matter; and

(c) is revocable at will by the board.

(3) A function delegated under this section may, if the industry board so determines or authorises, be further delegated.

(4) An industry board must cause a record of delegations to be kept in a manner determined by the board.

21—Accounts and audit

(1) An industry board must cause proper accounts to be kept of its financial affairs and must cause financial statements to be prepared in respect of each financial year.

(2) An industry board must cause its accounts to be audited at least once each year by a registered company auditor or the Auditor-General.

(3) The Auditor-General may at any time audit the accounts of an industry board.

22—Annual report

(1) An industry board must, on or before 30 September in each year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June.

(2) The report must included the audited financial statements of the industry board in relation to the relevant financial year.

(3) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

23—Common seal

The following provisions apply in relation to the common seal of an industry board:

(a) the seal will be in a form determined by the board;

(b) the seal can only be affixed to a document pursuant to a resolution of the board to that effect;

(c) the affixture of the seal to a document must be witnessed in accordance with a determination or policy of the board;

(d) if an apparently genuine document purports to bear the common seal of the board and appears to be duly witnessed, it will be presumed, in any legal proceedings, in the absence of proof to the contrary, that the common seal was duly affixed to the document.

Part 3—Registration

Division 1—Registration of employers

24—Industry board to register employers

An industry board must keep a register of employers in its designated sector.

25—Application for registration as registered employer

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

(2) The application must be made to the industry board for the designated sector.

(3) The application must—

(a) be made in the approved form; and

(b) include, or be accompanied by, any information required by the approved form; and

(c) be made within the prescribed period after the employer becomes an employer in the industry board's designated sector.

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

(a) provide further information or documents relevant to the application;

(b) verify information or documents forming part of the application including by statutory declaration.

(5) An applicant must comply with a request made under subsection (4) within the stated time, unless the applicant has a reasonable excuse.

(6) An employer must not contravene a requirement under this section.

Maximum civil penalty: $10 000.

26—Information to be entered in register

(1) An industry board must enter the day on which an employer becomes registered as an employer by the board in relation to its designated sector in its register of employers.

(2) An industry board may also enter any other information in the register the board considers necessary or convenient for the administration of this Act.

27—Employer to give notice of change to information

(1) A registered employer must give notice to an industry board about any change to the information given to the industry board by the employer for the purposes of, or in connection with, its registration within 28 days after the change happens.

(2) A notice under subsection (1) must be in the approved form.

(3) A registered employer must not contravene a requirement under this section.

Maximum civil penalty: $10 000.

28—Industry board may require information or documents from employer

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

(2) The industry board may, by written notice given to the person, require the person to give the industry board the information or documents stated in the notice that are necessary to enable the industry board to decide whether the person is or was an employer in its designated sector.

(3) The person must not fail to comply with the notice within the stated time.

Maximum civil penalty: $10 000.

(4) If the industry board decides that the person is an employer in its designated sector, the industry board must—

(a) register the person on its register of employers; and

(b) give the person notice of the registration.

(5) This section does not limit the power of an industry board to require the provision or production of information under another section.

29—Cancellation of registration

(1) A registered employer may, by notice in the approved form, apply to an industry board for the cancellation of the employer's registration if the registered employer stops employing workers in the board's designated sector.

(2) The industry board must consider the application and decide to—

(a) grant the application and cancel the employer's registration; or

(b) refuse to grant the application.

(3) If the industry board decides to grant the application, the board must—

(a) give the employer written notice of its decision; and

(b) enter in the board's register of employers that the employer is not a registered employer in its designated sector.

(4) If the industry board refuses to grant the application, the board must give the employer written notice of its decision in accordance with the regulations.

(5) Nothing in this section requires an industry board to remove information from a register that the board considers should be retained for the purposes of the administration of this Act.

Division 2—Registration of workers

30—Industry board to register workers

(1) An industry board must keep a register of designated workers in its designated sector.

(2) The industry board will register a designated worker on the register on account of—

(a) information provided to the board by an employer under this Act; or

(b) an application made to the board by the worker.

(3) An application under subsection (2)(b) must—

(a) be made in the approved form; and

(b) include, or be accompanied by, any information required by the approved form.

(4) An industry board may, by written notice, request an applicant to provide further information or documents relevant to the application.

31—Information to be entered in register

(1) An industry board must enter the day on which a person becomes a designated worker in relation to its designated sector in its register of designated workers.

(2) An industry board may also enter any other information in the register the board considers necessary or convenient for the administration of this Act.

32—Worker may give notice of change to information

(1) A registered designated worker may give notice to an industry board about any change to the information on the board's register of designated workers that relates to the designated worker.

(2) A notice under subsection (1) must be in the approved form.

Division 3—Related provisions

33—Related provisions

(1) Without limiting any other provision, an industry board may amend a register at any time in order to ensure that the register is kept up to date.

(2) A register will be kept by an industry board in such form as the board thinks fit (including in electronic form).

(3) A register of employers must be kept available for inspection, without fee, in accordance with the regulations and a copy of an entry on a register of employers may be obtained on payment of the prescribed fee.

(4) A designated worker, or a person acting on behalf of a designated worker, may inspect an entry on a register of designated workers that relates to the designated worker, without fee, and may obtain a copy of such an entry on the register on payment of the prescribed fee.

Part 4—Long service leave entitlements

34—Effective service entitlement

(1) Subject to this Act, a designated worker's entitlement to long service leave, or payment on account of or in lieu of long service leave, is determined according to the worker's aggregate effective service entitlement.

(2) A person will be credited with 3 months of effective service as a designated worker if they have—

(a) worked as a designated worker in the relevant designated sector for 1 or more days in a return period; or

(b) 1 or more days of allowable absence from work in the relevant designated sector in a return period.

(3) The total of months credited under subsection (2) to a person in relation to any return period applying under that subsection is the person's aggregate effective service entitlement.

(4) Subject to this Act, a person does not need to be credited with effective service in consecutive return periods to retain their effective service entitlement.

(5) If—

(a) a designated worker who has an effective service entitlement of less than 120 months is dismissed from employment as a designated worker; and

(b) the relevant industry board is satisfied, after affording the former designated worker and their former employer an opportunity to be heard, that the designated worker was properly dismissed on the ground of serious and wilful misconduct,

any effective service entitlement of the worker accrued in that employment is cancelled.

(6) If—

(a) a designated worker has an effective service entitlement of less than 84 months; and

(b) the designated worker has not previously had an effective service entitlement of 120 months or more; and

(c) the designated worker ceases to be employed as such for a continuous period that is equal to, or longer than, the preservation period for some reason other than physical or mental disability and no right to preservation of the effective service entitlement arises under this Act,

the effective service entitlement will be cancelled (but the subsection does not apply where the designated worker continues to be employed by the person in whose employment the entitlement accrued (either wholly or in part) or where the designated worker continues to be employed by an employer within the relevant designated sector).

(7) If a person takes long service leave, or receives a payment on account of or in lieu of long service leave, the person's effective service entitlement is reduced accordingly.

(8) If an industry board is satisfied that a person has been incorrectly registered as a designated worker under this Act, the board may, in accordance with a policy adopted by the board—

(a) cancel an effective service entitlement assigned to the person; and

(b) take such action as the board considers appropriate.

35—Crediting effective service under this Act and the *Long Service Leave Act 1987*

(1) This section applies if a worker changes the capacity in which they work for an employer—

(a) from work in a designated sector to work that is not in a designated sector; or

(b) from work that is not in a designated sector to work in a designated sector.

(2) If a person employed as a designated worker commences work in a different capacity in the service of the same employer, the following provisions apply:

(a) the person's continuity of service is preserved, but only in respect of the aggregate of the periods of work undertaken in each capacity in the service of that employer (and not in respect of any periods of work undertaken with any other employer);

(b) the period of effective service credited under this Act in respect of work undertaken by the person as a designated worker in the service of that employer (but no other employer) will be credited to the person under the *Long Service Leave Act 1987* (on the basis that 1 month of effective service under this Act is equivalent to 1 month of service under that Act) (and an effective service so credited will then be cancelled under this Act).

(3) If a person employed in a capacity other than as a designated worker commences work as a designated worker in the service of the same employer, the following provisions apply:

(a) the person's continuity of service is preserved, but only in respect of the aggregate of the periods of work undertaken in each capacity in the service of that employer (and not in respect of any periods of work undertaken with any other employer);

(b) the period of service in respect of work undertaken by the person other than as a designated worker in the service of that employer (but no other employer) calculated in accordance with the *Long Service Leave Act 1987* up to the point of change in the nature of employment will be credited as effective service for the purposes of this Act (on the basis that 1 month of service under the other Act is equivalent to 1 month of effective service under this Act).

(4) If—

(a) a person's service under the *Long Service Leave Act 1987* includes a period of effective service credited under subsection (2); and

(b) the person becomes entitled to long service leave, or to a payment in lieu of long service leave, under that Act,

the relevant industry board must pay to the person's employer (being the employer referred to in subsection (2)) an amount calculated as follows:

$$A = \frac{OWP \times M \times 1.3}{12}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under the *Long Service Leave Act 1987*

M is the total number of months of effective service entitlement of the person as a designated worker under this Act minus the portion of effective service entitlement representing work undertaken by the person as a designated worker in the service of any employer in the relevant designated sector other than the employer referred to in subsection (2).

(5) If—

(a) a person's effective service entitlement under this Act includes a period of service credited under subsection (3); and

(b) the person becomes entitled to long service leave, or to a payment on account of long service leave, under this Act,

the relevant industry board may recover from the person's employer (being the employer referred to in subsection (3)) an amount calculated as follows:

$$A = \frac{OWP \times D \times 1.3}{365}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under this Act

D is the person's period of continuous service accrued under the *Long Service Leave Act 1987* at the time that the person commenced work as a designated worker in the relevant designated sector (expressed in days).

(6) This section operates subject to any provision made in the regulations to take into account service for which a person has already taken long service leave or received a payment on account of long service leave.

36—Crediting effective service between different designated sectors

(1) This section applies if a worker changes the capacity in which they work for an employer from 1 designated sector (the ***first sector***) to another designated sector (the ***second sector***).

(2) If a person employed as a designated worker commences work in a different designated sector (the second sector) in the service of the same employer, the following provisions apply:

(a) the person's continuity of service is preserved;

(b) the period of effective service credited in respect of work undertaken by the person as a designated worker in the first sector will be credited to the person in respect of the long service leave scheme under this Act for the second sector;

(c) the industry board for the first sector will make a payment to the industry board for the second sector in accordance with a scheme established by the Minister for the purposes of this section.

(3) If the person subsequently commences work as a designated worker in another designated sector in the service of the same employer (including by working again in the first sector), this section will apply in the same way as it applied to the first change of employment from 1 designated sector to another (and may be applied from time to time to subsequent changes in employment in different designated sectors in the service of the same employer).

37—Long service leave entitlement

(1) Subject to this Act, a designated worker who has an effective service entitlement of 120 months or more is entitled to—

(a) 13 weeks long service leave in respect of the first 120 months; and

(b) 1.3 weeks of long service leave in respect of each subsequent 12 months of effective service entitlement.

(2) The employer in the relevant designated sector by whom a designated worker is employed when the long service leave entitlement arises must grant long service leave to the person if the person applies to the employer to take leave.

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

(4) However—

(a) a person is not entitled to take long service leave under this section in respect of work with a particular employer in the relevant designated sector within the first 3 months after commencing work with that employer; and

(b) an application for long service leave must be made at least 2 months before the person seeks to commence the leave; and

(c) the commencement of long service leave must take into account the reasonable needs of the employer; and

(d) the employer and the person may agree that the worker take leave in separate periods subject to the qualification that each such period must be at least 1 week in duration; and

(e) the employer and the person may agree that the person will receive a payment in lieu of long service leave, or a part of long service leave (with the calculation of the payment corresponding to the payment that would be made if the person took the leave).

(5) Subsection (4)(a) and (b) operate subject to any agreement between the employer and the person entitled to the leave about when the person will take long service leave.

(6) An agreement under subsection (4)(e) must be in writing signed by the employer and the person.

(7) If—

(a) a person takes long service leave; or

(b) a person's employment with the employer referred to in subsection (2) comes to an end before the person takes accrued long service leave and the person, in the approved form, makes an election under this provision,

the industry board for the relevant designated sector must pay to the person an amount calculated by multiplying the person's ordinary weekly pay by the period of leave referred to in paragraph (a) or (b) (as the case may be).

(8) If an agreement is entered into under subsection (4)(e), the industry board for the relevant designated sector must pay the amount payable under the agreement.

(9) An entitlement under this section applies subject to an enterprise agreement that provides for—

(a) long service leave to be taken; or

(b) a payment in lieu of long service leave,

in respect of a shorter period of effective service entitlement, employment or service.

(10) If an employer in a designated sector enters into an enterprise agreement that is within the ambit of subsection (9), the employer must provide a copy of the enterprise agreement to the relevant industry board within 21 days after the end of the return period in which the enterprise agreement was entered into.

(11) If a person dies, any entitlement of the person under this section vests in the person's personal representative.

38—Leave allowed before entitlement accrues

(1) An employer and a designated worker may agree on the worker taking long service leave in anticipation of the entitlement accruing to the worker under this Act if an enterprise agreement expressly provides for such an agreement.

(2) The agreement is to be based on 1.3 weeks of leave in respect of each 12 months of effective service entitlement.

(3) An agreement to take long service leave under this section must be in writing and signed by the employer and the person.

(4) If an agreement is entered into under this section, the industry board for the relevant designated sector must pay to the person the amount that would be payable if the leave was being taken under section 37, including, if relevant, an enterprise agreement referred to in section 37(9).

(5) If—

(a) a person takes long service leave under this section and receives a payment from an industry board; and

(b) before the entitlement to that leave accrues, the person ceases to work as a designated worker in the relevant designated sector for a continuous period of 12 months or more,

the industry board for the relevant designated sector may recover from the person an amount determined under the regulations (subject to any exception or qualification prescribed by the regulations).

39—Cessation of employment

(1) If, on application to the industry board for the relevant designated sector in the approved form, the industry board is satisfied that—

(a) —

(i) a designated worker has attained an effective service entitlement of 84 months or more (but less than 120 months); or

(ii) a designated worker has attained an effective service entitlement of less than 84 months and has previously had an effective service entitlement of 120 months or more; or

(iii) a designated worker has attained an effective service entitlement of 120 months or more but has not taken all of the long service leave to which the worker is entitled; and

(b) the designated worker has—

(i) died; or

(ii) ceased to work as a designated worker in the relevant designated sector because of a physical or mental disability that will prevent the person from working as a designated worker in the sector for a continuous period of 12 months or more; or

(iii) ceased to work as a designated worker in the relevant designated sector and will not be working as a designated worker in the sector for a continuous period of 12 months or more (from the time when the person ceased to work as a designated worker in the sector),

the industry board must pay the person (or the person's personal representative) an amount calculated as follows:

$$A = \frac{OWP \times M \times 1.3}{12}$$

where—

A is the amount payable

OWP is the person's ordinary weekly pay applicable under this Act as at—

(a) if the worker has died—the day of death;

(b) in any other case—the day on which the person ceased work as a designated worker

M is the effective service entitlement (expressed in months).

(2) If an industry board rejects an application under subsection (1), the board must give the applicant written notice of its decision in accordance with the regulations.

40—Entitlement if payment already made

A designated worker is not entitled to take leave or be paid for an entitlement under this Act if a payment has already been made in respect of a period of service that corresponds to the effective service entitlement under this Act.

Part 5—Funds

Division 1—Industry funds

41—Industry board to establish industry fund

(1) An industry board must establish a fund (an ***industry fund***) for the purposes of this Act.

(2) The name of the industry fund must comply with any requirement prescribed by the regulations.

(3) The industry fund will be administered by the industry board.

(4) The industry fund will consist of—

(a) levies received by the industry board from employers in its designated sector; and

(b) income and accretions produced by the investment of money from the fund; and

(c) money advanced to the industry board for the purposes of the fund; and

(d) penalties and fines recovered by the industry board under this Act; and

(e) any money required to be paid into an industry fund by the regulations; and

(f) any other money payable to the industry fund under this Act.

(5) There will be payable from the industry fund—

(a) any long service leave benefits that the industry board is liable to pay under this Act; and

(b) costs incurred by the industry board in performing its functions under this Act; and

(c) any payment to another industry board required or contemplated by this Act; and

(d) any payment required or authorised by the regulations; and

(e) any other money required or authorised to be paid from the industry fund under this Act.

42—Exemption from taxes and charges

An industry fund, and all transactions relating to an industry fund, are exempt from all taxes and other charges imposed under a law of the State.

43—Investment of industry fund

(1) An industry board may invest money that is not immediately required for the purposes of its industry fund.

(2) An industry board must, when investing money in an industry fund, take into account policies and guidelines (if any) determined by the Treasurer after consultation with the Minister.

44—Loans for training purposes

(1) An industry board may, with the approval of the Minister and the Treasurer, lend money from its industry fund to an industrial association or organisation for the purpose of establishing or operating a group training scheme for its designated sector.

(2) A loan under subsection (1) will be subject to such terms and conditions as the Minister and the Treasurer think appropriate.

45—Borrowing by industry board

(1) An industry board may, for the purposes of an industry fund, borrow money from the Treasurer or, with the approval of the Treasurer, from any other person.

(2) A liability incurred with the approval of the Treasurer under subsection (1) is guaranteed by the Treasurer.

(3) A liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) will be satisfied out of the Consolidated Account of the State (which is appropriated to the necessary extent).

46—Investigation of industry fund

(1) An industry board must ensure that an investigation into the state and sufficiency of its industry fund is carried out on a yearly basis.

(2) An investigation will be carried out by an actuary appointed for the purpose by the industry board.

(3) The actuary carrying out an investigation will report to the industry board on the result of the investigation and must state whether any reduction or increase is necessary in the rates of contribution to the industry fund.

(4) An industry board must, on receipt of a report under subsection (3)—

(a) provide a copy of the report to the Minister; and

(b) include with the report an indication as to whether the industry board intends to vary, or leave unaltered, the rates of contribution to the industry fund required under section 48.

(5) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Division 2—Common funds

47—Treasurer may authorise investment common funds

(1) The Treasurer may, after consultation with the Minister, authorise the establishment of 1 or more investment common funds for the collective investment of 2 or more industry funds (in whole or in part).

(2) The collective investment of funds under this section does not affect any purposes for which a particular industry fund must be applied.

(3) A common fund under this section will operate subject to any policies and guidelines (if any) determined by the Treasurer after consultation with the Minister.

(4) Without limiting subsection (3), a policy or guideline may provide for 1 or more of the following:

(a) the periodic distribution of income from a common investment fund to the relevant industry funds;

(b) the application of income from a common investment fund to the capital of the common investment fund;

(c) the payment of costs and the application of expenses related to the management, operation and investment of a common investment fund.

Part 6—Levies

48—Imposition of levy

(1) An employer in a designated sector is liable to pay a levy to the relevant industry board under this section.

(2) Subject to this section, the levy payable by an employer is the declared percentage of the total remuneration paid to each of the employer's designated workers in the designated sector during the period to which the levy relates.

(3) The percentage fixed by an industry board under this section—

(a) may only be varied by the board—

(i) in accordance with an indication to the Minister under section 46(4)(b); and

(ii) after 14 days has elapsed since the provision of the indication; and

(b) must be less than or equal to 3%.

(4) No levy is payable by an employer in respect of—

(a) a designated worker who is employed by the employer for less than 3 days in a month; or

(b) subject to an exception prescribed by the regulations—an apprentice.

(5) The regulations may—

(a) prescribe payments made to or for the benefit of a designated worker that will be taken as constituting remuneration for the purposes of this section; and

(b) prescribe payments made to or for the benefit of a designated worker that will not be taken as constituting remuneration for the purposes of this section.

(6) For the purposes of this section, if an employer pays a designated worker at a rate that exceeds the rate that applies to the designated worker under this Act for the purpose of determining the worker's ordinary weekly pay, the amount of the excess may be disregarded for the purpose of calculating the remuneration paid by the employer.

(7) In this section—

declared percentage means a percentage fixed by the relevant industry board and declared by notice in the Gazette.

49—Returns by employers

(1) Every employer in a designated sector must, within 21 days after the end of each return period, furnish the relevant industry board with a return in the approved form containing such information as may be prescribed or required by the approved form.

(2) The return must be accompanied by the levy payable by the employer in respect of the return period.

(3) An industry board may require an employer to provide—

(a) a certificate signed by the employer, or a person acting on the employer's behalf, verifying the information contained in a return; or

(b) some other verification of the information of a kind stipulated by the board.

(4) An industry board may—

(a) determine that a requirement of this section will not apply to a particular employer or employers of a particular class; and

(b) impose, by notice to the particular employer or by notice in the Gazette, such other requirements on the employer or employers as may be appropriate in the circumstances.

(5) An employer must not contravene a requirement imposed under this section.

Maximum civil penalty: $10 000.

(6) An employer who is registered with an industry board but who does not employ any designated workers in a particular return period will nevertheless be taken to be an employer in the particular designated sector for the purposes of this section.

50—Recovery on default

(1) If an employer—

(a) fails or neglects to furnish a return when required by or under this Act; or

(b) furnishes a return that the relevant industry board has reasonable grounds to believe to be defective in any respect,

the board may make an assessment of the levy payable for the return period on the basis of estimates made by the board.

(2) If an employer fails to pay a levy required by or under this Act, the relevant industry board may make an assessment of the levy payable by the employer.

(3) An industry board must, as soon as is reasonably practicable after making an assessment under this section, give written notice of the assessment to the employer to whom the assessment relates.

(4) An employer to whom a notice of an assessment is given under this section must pay the amount of the assessment within 21 days, or such longer period as the notice may allow.

Maximum civil penalty: $10 000.

51—Penalty for late payment

(1) If an employer fails to furnish a return or to pay a levy as and when required by or under this Act—

(a) the amount of any levy in arrears will be increased by penalty interest at the prescribed rate; and

(b) the relevant industry board may impose on the employer a fine of an amount (not exceeding the prescribed amount) fixed by the board.

(2) An industry board may for any proper reason remit penalty interest or a fine imposed under subsection (1) wholly or in part.

52—Recovery of levies

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

53—Refund of overpayments

(1) If a levy is overpaid, the industry board that received the payment must refund the amount of the overpayment within the period prescribed by the regulations.

(2) If a levy has been paid incorrectly and the relevant industry board subsequently discovers, as a result of an error associated with the payment of the levy, it has made a payment in respect of a long service leave entitlement, or purported long service leave entitlement, for which it was not liable, the board may deduct from an amount that would otherwise be refunded under subsection (1) an amount equal to the payment made by the board as a result of the error.

Part 7—Review

54—Review by SAET

A person who is dissatisfied with a decision of an industry board under this Act may, within 30 days after the day on which the decision was made (or within such longer period as SAET may allow), apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the decision.

55—Effect of pending review by SAET

(1) An obligation to pay a levy or a right to recover a levy is not suspended by the commencement of proceedings for a review by SAET.

(2) If the assessment of a levy is altered on a review, a due adjustment must be made and, if the assessment is increased, a further amount is payable in accordance with the increase and, if the assessment is decreased, the industry board that received the levy must refund any amount overpaid.

Part 8—Civil penalties

56—Civil penalties

(1) If the words "Maximum criminal penalty" and "Maximum civil penalty" both appear at the end of a provision of this Act, this indicates that the industry board for the relevant designated sector may, as an alternative to criminal proceedings, bring proceedings in SAET (constituted as the South Australian Employment Court) for the imposition of a civil penalty in respect of a contravention of the provision.

(2) If the words "Maximum civil penalty" appear at the end of a provision of this Act without the words "Maximum criminal penalty", this indicates that the industry board for the relevant designated sector may bring proceedings in SAET (constituted as the South Australian Employment Court) for the imposition of a civil penalty in respect of a contravention of the provision (and in such a case a contravention does not constitute a criminal offence).

(3) The proceedings in SAET for the imposition of a civil penalty in respect of a contravention may be brought against any person who is involved in the contravention (and a person who is found to have been involved in a contravention of a provision is taken to have contravened the provision).

(4) A person is ***involved in a contravention*** of a provision if (and only if) the person—

(a) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(b) has induced the contravention, whether by threats or promises or otherwise; or

(c) has aided, abetted, counselled or procured the contravention; or

(d) has conspired with others to effect the contravention.

(5) If in proceedings for the imposition of a civil penalty SAET is satisfied, on the balance of probabilities, that the person against whom the proceedings are brought has contravened the provision to which the proceedings relate, SAET may order the person to pay an amount as a civil penalty not exceeding the amount specified by this Act as the maximum civil penalty in relation to that contravention.

(6) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, a civil penalty may be imposed in relation to the contravention of any 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).

(7) If proceedings are brought against a person for the imposition of a civil penalty under this section, criminal proceedings may not be brought against the person in respect of the same contravention (or alleged contravention).

(8) Proceedings for the imposition of a civil penalty under this section may only be brought by an industry board.

(9) The amount of any civil penalty is payable to the industry board that brought the proceedings.

(10) Proceedings for the imposition of a civil penalty under this section may be commenced at any time within 6 years after the day on which the relevant contravention occurred.

(11) SAET must apply the rules of evidence and procedure when hearing proceedings under this section.

(12) SAET may, in any proceedings under this section, only order a party to pay costs to another party if SAET believes that the party ordered to pay the costs has acted unreasonably and, in so doing, caused the other party to incur costs or additional costs.

Part 9—Miscellaneous

57—Self-employed contractors and working directors

(1) This section applies to—

(a) a self-employed contractor in a designated sector; and

(b) a person who is employed under a contract of service in a designated sector by a body corporate of which the person is a director.

(2) A person to whom this section applies may, on application in the approved form, be registered by the industry board constituted in relation to the relevant designated sector under this section.

(3) A registered person is eligible to participate in an investment scheme established by the relevant industry board for the purposes of this section.

(4) If, in the case of a self-employed contractor—

(a) the contractor had previously been a designated worker in the relevant designated sector; and

(b) the contractor was not entitled to long service leave or a payment for *pro rata* long service leave when they ceased work as a designated worker in the relevant designated sector; and

(c) the contractor commenced work as a self-employed contractor in the relevant designated sector within the preservation period after cessation of their employment as a designated worker in the sector; and

(d) the application for registration under this section was made within 6 months after commencing work as a self-employed contractor in the relevant designated sector (or within such longer period as the relevant industry board may, in its absolute discretion, allow),

any effective service entitlement is preserved on registration.

(5) If—

(a) a person was not entitled to long service leave or a payment for *pro rata* long service leave when they ceased work as a designated worker in a particular designated sector; and

(b) within the preservation period after ceasing work as a designated worker the person becomes a director to whom this section applies; and

(c) the person applies for registration under this section within 6 months after becoming a director (or within such longer period as the relevant industry board may, in its absolute discretion, allow),

any effective service entitlement is preserved on registration.

(6) The following provisions apply to the investment scheme established by an industry board for the purposes of this section:

(a) the board will, for the purposes of the scheme, before the commencement of each financial year—

(i) set a contribution rate; and

(ii) set an interest rate,

for the financial year;

(b) a registered contractor or the employer of a director to whom this section applies may then, in respect of each (or any) period prescribed by the regulations, pay to the board an amount equal to the relevant contribution rate (and a payment may be made by a contractor or employer in advance or, with the approval of the board, in arrears);

(c) the registered person will then, in accordance with a scheme prescribed by the regulations (but subject to this section), be credited by the board with—

(i) the prescribed number of months of effective service entitlements; and

(ii) the amount of the payment; and

(iii) interest in accordance with the rate set under paragraph (a)(ii).

(7) A payment under subsection (6)(b) must be accompanied by a return in the approved form containing information as may be prescribed or required by the relevant industry board.

(8) A registered person who attains an effective service entitlement of 120 months in the relevant designated sector (including any effective service entitlement preserved under subsection (4)) is entitled to an amount calculated as follows:

$$A = \frac{OWP \times M \times 1.3}{12} + CI$$

where—

A is the amount payable

OWP is the registered person's ordinary weekly pay applicable under this Act (applying any presumption prescribed by the regulations)

M is the effective service entitlement preserved under this section (or, if no such entitlement is preserved, zero)

CI is the total of the registered person's entitlement credited under subsection (6)(c)(ii) and (iii).

(9) If, on application to the relevant industry board under this subsection in the approved form, the board is satisfied that—

(a) —

(i) a registered person has attained an effective service entitlement of 84 months (including any effective service entitlement preserved under this section); or

(ii) a registered person has attained an effective service entitlement of less than 84 months and has previously had an effective service entitlement of 120 months or more; and

(b) the registered person has—

(i) died; or

(ii) ceased to work in the relevant designated sector because of physical or mental disability that will prevent the person from working in the sector in the future, or because of some other significant pressing necessity; or

(iii) retired from work and does not intend to work in the future; or

(iv) in the case of a person registered under subsection (1)(b)—ceased work in the relevant designated sector (whether or not remaining as a director of the relevant body corporate),

the board must pay to the registered person (or their personal representative) an amount calculated in the same manner as under subsection (8).

(10) If—

(a) on application to the relevant industry board under this subsection in the approved form, the board is satisfied that a registered person has ceased work in the relevant designated sector; and

(b) the registered person does not have an entitlement under subsection (8) or (9),

the board must pay to the registered person an amount calculated as follows:

$$A = \frac{OWP \times M \times 1.3}{12} + C$$

where—

A is the amount payable

OWP is the registered person's ordinary weekly pay applicable under this Act (applying any presumption prescribed by the regulations)

M is any effective service entitlement preserved under this section, subject to the qualification that if the aggregate of the registered person's effective service entitlement preserved under this section and the registered person's effective service entitlement credited under subsection (6)(c)(i) does not equal or exceed 84 months, then M will be taken to be zero

C is the total of the registered person's entitlement credited under subsection (6)(c)(ii) (without interest).

(11) If an industry board rejects an application under this section, the board must give the applicant written notice of its decision (setting out a brief statement of the board's reasons for making its decision).

(12) If a registered person—

(a) ceases to be a self-employed contractor in a designated sector or a director to whom this section applies; and

(b) does not have an entitlement under subsection (8) or (9); and

(c) has not received and will not be receiving a payment from the industry board under subsection (10); and

(d) has become (or has become again) a person to whose employment this Act applies within the preservation period after ceasing to be a self-employed contractor or a director to whom this section applies (as the case requires),

the effective service entitlement accrued under this section together with the effective service entitlement (if any) preserved under subsection (4) or (5) will be credited to the person for the purposes of Part 4.

(13) If—

(a) a registered person has an effective service entitlement of less than 84 months; and

(b) the registered person has not previously had an effective service entitlement of 120 months or more; and

(c) the registered person ceases to make payments under this section for a continuous period equal to, or longer than, a period prescribed by the regulations, other than because of physical or mental disability; and

(d) the registered person has not become a person to whose employment this Act applies (see section 5) within the preservation period after the period prescribed under paragraph (c); and

(e) no other right to the preservation of the effective service entitlement exists under this Act,

the effective service entitlement is cancelled and the relevant industry board must pay to the person an amount equal to the amount paid by the person under this section together with interest credited under this section.

(14) In this section—

director to whom this section applies means a person referred to in subsection (1)(b);

registered person means a person registered by an industry board under subsection (2).

58—Salary sacrifice arrangements

(1) A registered employer may, by application in the approved form, apply to an industry board to be provided with all or part of an amount that would otherwise be payable to a designated worker employed by the employer on account of an entitlement to long service leave, or a payment in respect of long service leave, in connection with a salary sacrifice arrangement between the employer and the designated worker.

(2) The application must be made at least 1 month before the payment is proposed to be made.

(3) The industry board must consider the application and decide to—

(a) grant the application; or

(b) refuse to grant the application.

(4) If the industry board decides to grant the application, the board may provide the relevant amount to the employer (so that the payment to be made in respect of the entitlement under this Act is made by the employer rather than the board).

(5) If the industry board refuses to grant the application, the board must give the employer written notice of its decision in accordance with the regulations.

(6) The employer must provide the industry board with evidence that confirms that the amount has been paid to the designated worker (or for the benefit of the designated worker).

(7) If the employer does not pay all of the amount received under this section to the designated worker (or for the benefit of the designated worker) in accordance with the arrangement outlined in the application under subsection (1), the employer must pay the unpaid amount to the industry board.

(8) The evidence required under subsection (6) and the payment required under subsection (7) must be provided to the industry board within the period prescribed by the regulations.

(9) An employer must not fail to comply with subsection (8).

Maximum civil penalty: $5 000.

59—Reciprocal arrangements with other States and Territories

(1) The Minister, or an industry board acting with the approval of the Minister, may make a reciprocal arrangement with an authority of another State or a Territory that is responsible for, or involved in the implementation of, the administration of a corresponding law, being a reciprocal arrangement relating to—

(a) long service entitlements for designated workers moving from this State to that State or Territory or moving from that State or Territory to this State; or

(b) any incidental or related matters.

(2) An industry board—

(a) will be liable to make contributions to, and entitled to recover contributions from, interstate authorities in accordance with a reciprocal arrangement under this section; and

(b) will in all other respects be bound by its terms.

60—Exemptions for certain interstate employers

(1) An employer—

(a) who is domiciled outside the State and involved in a designated sector in the State; or

(b) who is domiciled in the State and involved in a designated sector outside the State,

may, in a manner and form determined by the relevant industry board, apply to the board to be exempted from the requirement to be registered and pay a levy under this Act in respect of any designated worker, or class of designated workers, employed by the employer.

(2) If the industry board is satisfied that any designated worker, or class of designated workers, affected by an application under this section is, in the performance of work, covered by an appropriate long service leave scheme established under a corresponding law, the board may grant the application.

(3) An industry board may, pending making a decision on an application under this section, exempt an employer from the requirement to be registered under this Act.

(4) The board may, at any time by written notice to the relevant employer, revoke an exemption under this section.

61—General exemptions

(1) Subject to this section, the Minister may, by notice in the Gazette—

(a) exempt a person or class of persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of this Act; or

(b) vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.

(2) The Minister must consult with the industry board constituted in relation to the designated sector to which an exemption relates before making a notice under subsection (1).

(3) A person must not contravene a condition of an exemption.

Maximum civil penalty: $10 000.

62—Power to require information

(1) For the purposes of investigating any prescribed matter an industry board may, by written notice, require any person—

(a) to furnish to the board, within the time specified in the notice, such information as may be required by the board in a form determined by the board; or

(b) to produce to the board, within the time specified in the notice, such documents as may be required by the board; or

(c) to attend for the purpose of giving evidence before the board at a time and place specified in the notice.

(2) The industry board may—

(a) require that information furnished to it in writing be verified by statutory declaration; and

(b) require that a person attending before it give evidence and, if it thinks fit, give that evidence on oath or by affirmation.

(3) The industry board is authorised to administer an oath or to take an affirmation for the purposes of subsection (2).

(4) If a person—

(a) who has been served with a notice to furnish information to an industry board, or to produce any documents to an industry board, fails without reasonable excuse to comply with the notice; or

(b) who has been served with a notice to attend before an industry board fails without reasonable excuse to attend in compliance with the notice; or

(c) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by an industry board,

the person is guilty of an offence.

Maximum criminal penalty: $10 000.

Maximum civil penalty: $10 000.

(5) A person is not obliged to answer a question under this section if the answer would tend to incriminate the person of an offence, or to produce a document if it or its contents would tend to incriminate the person of an offence.

(6) In this section—

prescribed matter means—

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

(b) any other matter prescribed by the regulations.

63—Authorised officers

(1) The Minister may appoint such authorised officers as the Minister thinks fit for the purposes of this Act.

(2) Each authorised officer appointed by the Minister must be furnished with an appropriate identity card.

(3) An authorised officer must produce the identity card for inspection by any person who questions their authority to exercise the powers of an authorised officer under this Act.

(4) The Minister may, by written notice served on an authorised officer, revoke the appointment of the authorised officer under this Act.

64—Powers of inspection

(1) For the purposes of this Act, an authorised officer may at any reasonable time—

(a) enter any premises which the authorised officer has reasonable cause to believe are premises of an employer in a designated sector or premises where a designated worker is employed or works; or

(b) require the production of any document—

(i) required to be kept by or under this Act; or

(ii) relating to the service of designated workers; or

(iii) relevant to long service leave under this Act; or

(c) examine and copy, or take extracts from, any document, or require an employer to provide a copy of any document; or

(d) seize and remove anything that may constitute evidence of an offence against this Act; or

(e) take photographs or recordings; or

(f) require any person to answer, to the best of the person's knowledge or belief, any question relevant to the administration, operation or enforcement of this Act.

(2) An authorised officer may, in the exercise of powers under this section—

(a) be accompanied by such assistants as may be necessary or desirable in the circumstances; and

(b) ask any questions through an interpreter.

(3) A person must not—

(a) hinder or obstruct an authorised officer in the exercise of a power conferred by this section; or

(b) refuse or fail to answer truthfully to the best of the person's knowledge or belief a question put to the person under this section; or

(c) without lawful excuse, fail to comply with a requirement made under this section.

Maximum criminal penalty: $10 000.

Maximum civil penalty: $10 000.

(4) A person is not required to answer a question under this section if the answer would tend to incriminate the person or make the person liable to a penalty.

65—Records

(1) An employer under this Act must keep, or cause to be kept, in the State sufficient records to enable the employer's liability in respect of the payment of levies or other contributions under this Act to be accurately assessed.

Maximum civil penalty: $5 000.

(2) A record required under subsection (1) must be kept for at least 7 years after the completion of the period to which it relates.

Maximum civil penalty: $5 000.

(3) Subsections (1) and (2) do not apply—

(a) to a record, or a record of a kind, exempt from the operation of this section by determination of an industry board; or

(b) to a record that an industry board has determined need no longer be kept.

(4) A person must not keep a record for the purposes of this Act that the person knows to be false or misleading in a material particular.

Maximum civil penalty: $10 000.

66—Recovery of amounts and crediting entitlements

(1) If an amount is payable or recoverable under this Act, including an amount of levy that should have been paid or an amount in respect of an employer who should have furnished one or more returns but failed to do so, the period of recovery of the amount is 7 years from which it was payable or able to be recovered.

(2) The period for retrospectively crediting an effective service entitlement is 7 years from the date on which the work to which the entitlement relates was carried out.

(3) This section applies despite any other Act or law.

67—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum criminal penalty: $10 000.

Maximum civil penalty: $10 000.

68—Confidentiality and provision of information

(1) A person must not divulge or communicate information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—

(a) with the consent of the person to whom the information relates; or

(b) in connection with the administration, operation or enforcement of this or any other Act; or

(c) to a person concerned in the administration, operation or enforcement of a corresponding law; or

(d) for the purposes of legal proceedings; or

(e) as authorised by the regulations.

(2) A person employed or engaged in the administration of this Act is authorised to provide prescribed information or documents to another person or body in accordance with the regulations.

(3) The regulations may place restrictions on the disclosure of information or documents provided under subsection (1) or (2).

(4) Subsection (2) operates despite any other Act or law.

69—Service of documents

(1) A notice or other document required or authorised to be served or given to a person by an industry board may be served or given—

(a) personally; or

(b) by leaving the notice or document at the person's ordinary place of residence, or during normal office hours at the person's ordinary place of business; or

(c) by sending the notice or document by post to the person's ordinary place of residence or ordinary place of business; or

(d) by sending the notice or document to an email address known to be used by the person (in which case the notice or document will be taken to have been served or given at the time of transmission); or

(e) in such other manner as may be prescribed by the regulations for the purposes of this section.

(2) Without limiting subsection (1), a notice or document to be served on or given to a company within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.

(3) The provisions of this section are in addition to, and do not limit or exclude, the provision of any other law with respect to the service of notices.

70—No contracting out

(1) The provisions of this Act have effect despite any provision to the contrary in any contract.

(2) A provision in an agreement, whether in writing or not, under which the operation of this Act is, or is purported to be, excluded, modified or restricted, or that has the effect of excluding, modifying or restricting the operation of this Act, is void.

71—Adverse action against designated worker

(1) An employer must not dismiss or threaten to dismiss a designated worker from, or prejudice or threaten to prejudice a designated worker in, employment because the designated worker is entitled to—

(a) long service leave under section 37; or

(b) an amount under section 39.

Maximum civil penalty: $10 000.

(2) Without limiting section 72(4), a court by which an employer is convicted of an offence against this section may, on application by the person against whom the offence was committed—

(a) award compensation to the applicant for loss resulting from the commission of the offence; and

(b) if the applicant was dismissed from employment—order the employer to re-employ the applicant on conditions determined by the court.

72—Offences

(1) Proceedings for an offence against this Act may only be commenced by—

(a) the Minister; or

(b) the Director of Public Prosecutions; or

(c) an industry board; or

(d) a person acting with the written authorisation of the Minister.

(2) A prosecution for an offence against this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed or, with the authorisation of the Attorney-General, at any later time within 6 years after the day on which the offence is alleged to have been committed.

(3) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(4) If, in proceedings for an offence against this Act, the court finds that the defendant has contravened this Act, the court may, in addition to any penalty that it may impose—

(a) order the defendant to take specified action to make good the contravention in a manner, and within a period, specified by the court; or

(b) order the defendant to furnish or make available to an industry board, within a period specified by the court, such information or records as the board may reasonably require for the purposes of this Act.

(5) A person to whom an order is given under subsection (4) who fails to comply with the order within the time specified in the order, or such further time as the court, on application, allows, is guilty of an offence.

Maximum criminal penalty: $10 000.

Maximum civil penalty: $10 000.

73—Evidentiary provision

(1) In any proceedings under this Act, a certificate purporting to be under the seal of an industry board certifying that—

(a) the person named in the certificate was at the time or during the period specified in the certificate an employer; or

(b) the employer named in the certificate was liable to pay a contribution in respect of the period specified in the certificate; or

(c) an assessment of the remuneration paid by an employer during a particular period has been duly made; or

(d) the particulars of the assessment are as stated in the certificate; or

(e) notice of an assessment has been served on an employer; or

(f) the amount specified in the certificate was, on the day the certificate was issued, payable by the employer named in the certificate,

will, in the absence of evidence to the contrary, be proof of the matters stated in the certificate.

(2) In any proceedings against a person for failing to furnish a return under this Act, a certificate purporting to be under the seal of an industry board certifying that the return was not received before the expiration of the period within which it was required to be furnished will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the return.

(3) In any proceedings against a person for failing to furnish an industry board with information required by the board under this Act, a certificate purporting to be under the seal of the board certifying that—

(a) the defendant was required to furnish the board with the information of the nature specified in the certificate within the period specified in the certificate; and

(b) the defendant failed duly to furnish the information as and when required by the board,

will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the information.

74—Regulations

(1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) prescribe exclusions from the operation of Schedule 2; and

(b) establish a scheme or schemes for preserving effective service entitlements where workers change their employment status in circumstances that are not contemplated by Part 4 and qualify under any conditions or criteria prescribed by the regulations; and

(c) make provision in connection with registrations under this Act; and

(d) require employers or former employers to notify an industry board of specified matters; and

(e) require records or other information to be kept and provide for the provision of any report, document or other information to any person or body that performs a function under this Act; and

(f) make provisions of a saving or transitional nature consequent on an area of work being brought within the ambit of this Act; and

(g) prescribe civil penalties, not exceeding $5 000, for a contravention of the regulations (and section 56 will apply to such a contravention as if a reference in that section to this Act included a reference to the regulations).

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) provide for a matter to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or an industry board.

(4) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

75—Review of Act

(1) The Minister must cause a review of the operation of this Act to be conducted, and a report on the review to be prepared and submitted to the Minister, after this Act has been in operation for a period of 3 years.

(2) The Minister must cause a copy of a report submitted under subsection (1) to be laid before both Houses of Parliament within 3 months after receiving the report.

Schedule 1—Establishment of industry boards

1—Community Services Sector Long Service Leave Board

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

Note—

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

Schedule 2—Community services

1—Preliminary

Services qualify under this Schedule if they—

(a) are specified in clause 2; and

(b) involve the performance of work covered under clause 3.

2—Services

The following services are specified:

(a) Aboriginal and Torres Strait Islander community services;

(b) accommodation support services;

(c) advocacy services;

(d) alcohol and other drug services;

(e) child safety and support services;

(f) community development services;

(g) community education services;

(h) community legal services;

(i) counselling services;

(j) disability emergency response services;

(k) disability support services;

(l) employment services;

(m) family and domestic violence services;

(n) family day care services;

(o) financial counselling services;

(p) foster care and out-of-home care services;

(q) home and community care services;

(r) homelessness support services;

(s) lesbian, gay, bisexual, transgender and intersex services;

(t) mental health services;

(u) migrant and multicultural support services;

(v) offenders transitioning services;

(w) respite services;

(x) seniors community support services;

(y) sexual assault and sexual violence services;

(z) social housing services;

(za) violence prevention services;

(zb) women's services;

(zc) youth justice services;

(zd) youth support services.

3—Coverage

(1) Work is covered under this clause if the work has a rate of pay prescribed by a qualifying award, even if a person performing a service is being paid under an enterprise agreement or an individual contract at a different rate of pay.

(2) For this clause, a ***qualifying award*** is—

(a) either—

(i) the *Social, Community, Home Care and Disability Services Industry Award 2010*; or

(ii) the *Aboriginal Legal Rights Movement Award 2016*,

subject to a regulation that provides that an award specified in this paragraph no longer applies; or

(b) an award made in substitution of an award specified in paragraph (a), subject to a regulation (if any) under that paragraph; or

(c) an award prescribed by the regulations.

Schedule 3—Related amendments and transitional provisions

Part 1—Amendment of *Construction Industry Long Service Leave Act 1987*

1—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of ***building work*** insert:

CEO means the chief executive officer of the Board engaged or appointed under section 13;

(2) Section 4(1)—before the definition of ***the relevant date*** insert:

public sector agency means—

(a) an administrative unit under the *Public Sector Act 2009* (including the Chief Executive of such an administrative unit); or

(b) an agency or instrumentality of the Crown;

2—Insertion of heading

After the heading to Part 2 insert:

Division 1—Establishment and governance

3—Substitution of section 13

Section 13—delete the section and substitute:

Division 2—Staff and facilities

13—Chief executive officer

(1) There will be a chief executive officer of the Board.

(2) The CEO will be engaged or appointed by the Board (on terms and conditions determined by the Board).

(3) Subject to any decision, determination or policy of the Board, the CEO is responsible to the Board for—

(a) managing the Board's business efficiently and effectively; and

(b) supervising the staff engaged in the work of the Board.

(4) Subsection (3) does not derogate from the operation of section 17 of the *Portable Long Service Leave Act 2024*.

13A—Staff

(1) The staffing arrangements for the Board will be determined by the Board.

(2) A staffing arrangement under subsection (1) may provide for 1 or both of the following:

(a) the Board engaging staff as employees or contractors of the Board;

(b) with the agreement of a public sector agency—the Board making use of the staff of the public sector agency.

13B—Facilities

The Board may, by arrangement with a public sector agency, make use of the services or facilities of the public sector agency.

Part 2—Transitional provisions

4—Interpretation

In this Part—

Board means the Community Services Sector Long Service Leave Board;

designated day means a day declared by the Governor, by proclamation, as the designated day for the purposes of the provision in which the term is used.

5—Extension of term for registration as employer

(1) This clause applies in relation to an employer in the community services sector on the designated day.

(2) The employer must apply for registration under section 25(1) within 28 days after the designated day.

6—Current workers

(1) This clause applies in relation to a person who is employed by an employer (the ***relevant employer***) in the community services sector immediately before the designated day who, on the designated day, becomes a designated worker under this Act.

(2) The following provisions will apply in relation to the person:

(a) the person's continuity of service, as it applied to employment with the relevant employer immediately before the designated day, is preserved under this Act;

(b) the period of service in respect of work undertaken by the person in the service of the relevant employer (but no other employer) calculated in accordance with the *Long Service Leave Act 1987* up to the designated day will be credited as effective service for the purposes of this Act (on the basis that 1 month of service under the other Act is equivalent to 1 month of effective service under this Act).

(3) Subclause (2) operates subject to the qualification that if the person changes employer after the designated day and before the person becomes entitled to long service leave, or a payment on account of long service leave, under this Act, then the person's service up to the designated day will no longer be taken into account.

(4) This clause operates subject to any provision made in the regulations to take into account service for which a person has already taken long service leave or received a payment on account of long service leave.

7—Employers

(1) This clause applies in relation to an employer in the community services sector immediately before the designated day.

(2) The following provisions apply in respect of each employee (if any) of the employer who, on the designated day, becomes a designated worker and who, immediately before the designated day, has an entitlement to long service leave, or to a payment in respect of long service leave, accrued under the *Long Service Leave Act 1987*:

(a) subject to the regulations, the employer is liable to pay to the Board an amount equal to the amount that would be payable by the employer if the employee's accrued entitlement under the *Long Service Leave Act 1987* had been paid immediately before the designated day;

(b) subject to the regulations, the amount will be payable by the employer when the designated worker takes long service leave, or receives a payment in respect of long service leave, on or after the designated day that relates to long service leave accrued under the *Long Service Leave Act 1987* (and the amount may be paid in 2 or more instalments depending on the extent to which the long service leave or payment to the designated worker corresponds to the entitlement accrued under the *Long Service Leave Act 1987* immediately before the designated day);

(c) when the designated worker takes long service leave, or receives a payment in respect of long service leave, on or after the designated day that relates to long service leave accrued under the *Long Service Leave Act 1987*—

(i) the amount paid (or payable) by the employer under this subclause will be applied (wholly or in part) towards the payment to be made to the designated worker on account of the long service leave or in respect of long service leave (with the intention that this will be applied to reflect the extent to which the payment corresponds to the entitlement accrued under the *Long Service Leave Act 1987* immediately before the designated day); and

(ii) the amount payable to the designated worker will be determined in accordance with the regulations to take into account—

(A) the value of the amount paid or payable by the employer under this subclause; and

(B) the extent to which the amount payable to the designated worker corresponds to the entitlement accrued under the *Long Service Leave Act 1987* immediately before the designated day; and

(C) any provision made by the regulations relating to the calculation of the designated worker's ordinary weekly pay (which may be a variation on what would otherwise apply under this Act);

(d) the employer must provide to the Board such information as the Board may require to calculate any amount payable under this subclause;

(e) if the Board makes a payment to the designated worker under this subclause before the employer makes a payment to the Board under this subclause, the liability of the employer to make a payment to the Board is not extinguished on account of the payment.

(3) The following provisions apply in respect of each employee (if any) of the employer who, on the designated day, becomes a designated worker and who, immediately before the designated day, does not have an entitlement to long service leave, or to a payment in respect of long service leave, accrued under the *Long Service Leave Act 1987*:

(a) if the designated worker becomes entitled to long service leave, or a payment in respect of long service leave, under this Act and the designated worker's effective service entitlement includes a period of service credited under clause 6, the employer is liable to pay to the Board an amount calculated under the regulations to reflect the extent to which the designated worker's period of service credited under clause 6 applies;

(b) subject to the regulations, the amount will be payable by the employer when the designated worker takes long service leave, or receives a payment in respect of long service leave, on or after the designated day (and the amount may be paid in 2 or more instalments depending on the extent to which the long service leave or payment to the designated worker corresponds to the period of service credited under clause 6);

(c) the amount payable to the designated worker on account of the long service leave or in respect of long service leave will be determined in accordance with the regulations to take into account—

(i) the value of the amount paid or payable by the employer under this subclause; and

(ii) the extent to which the designated worker's period of service credited under clause 6 applies; and

(iii) any provision made by the regulations relating to the calculation of the designated worker's ordinary weekly pay (which may be a variation on what would otherwise apply under this Act);

(d) the employer must provide to the Board such information as the Board may require to calculate any amount payable under this subclause;

(e) if the Board makes a payment to the designated worker under this subclause before the employer makes a payment to the Board under this subclause, the liability of the employer to make a payment to the Board is not extinguished on account of the payment;

(f) the regulations may provide that this subclause does not apply to an employer, or an employer of a prescribed class, in circumstances prescribed by the regulations.

(4) For the purposes of this clause, a person who has completed at least 7 years of service under the *Long Service Leave Act 1987* immediately before the designated day will be taken to have an accrued entitlement under that Act.

(5) An entitlement or liability under this clause operates subject to the operation of clause 6(3).

(6) This clause does not apply if an employer and an employee agree to the employer making a payment to the employee to extinguish a liability under the *Long Service Leave Act 1987*.

(7) An agreement under subclause (6) must—

(a) be entered into within 3 months after the designated day; and

(b) be in writing and signed by the employer and the employee; and

(c) be provided to the Board in accordance with the regulations.

(8) The regulations may make additional provisions in connection with the operation of this clause, including to facilitate or give effect to other arrangements that relate to the interaction between this Act and the *Long Service Leave Act 1987* (which arrangements may operate in place of any provision made by this clause).

8—Regulations

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing penalties on the person.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2024	43	*Portable Long Service Leave Act 2024*	3.10.2024	17.10.2024 (*Gazette 17.10.2024 p3947*) except ss 4, 5(1) to (6), 6, 7(1) to (5), 8, Pts 3, 4 & 7 to 9, Sch 2 & Sch 3 Pt 2—1.10.2025 (*Gazette 17.7.2025 p2650*) and except ss 5(7) & 7(6)—3.10.2026 (s 27(6) *Legislation Interpretation Act 2021*)