

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Long Service Corporation Bill 2010* is cognate with this Bill.

Overview of Bill

The object of this Bill is to establish a scheme for the portability of long service leave in the contract cleaning industry. The scheme will operate in a broadly similar manner to comparable schemes for the industry in the Australian Capital Territory and Queensland.

The scheme will enable certain workers in the contract cleaning industry who are registered under the proposed Act to access paid long service leave based on 10 or more years (3650 days or more) of recognised service in the industry. There will be no ability to access payments instead of leave but a pro rata payment will be granted after 5 years (1825 days) of service in limited circumstances (death, incapacity and permanent exit from the contract cleaning industry).

Payments will be funded through the imposition of a levy calculated as a prescribed percentage of the ordinary remuneration of the workers and payable by employers in the contract cleaning industry. The levies will be held in a fund to be established under the proposed *Long Service Corporation Act 2010* (which is cognate with this Explanatory note page 2

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Bill). The scheme is to be administered by the Building and Construction Industry Long Service Payments Corporation as reconstituted and renamed as the Long Service Corporation (the **Corporation**) by that proposed Act.

The Bill also makes provision for the entry into reciprocal arrangements with authorities in other States and Territories with laws corresponding to the proposed Act.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2011.

Clause 3 defines certain words and expressions used in the proposed Act. The **contract cleaning industry** is defined as the industry in which employers provide cleaning work, and minor property maintenance work that is incidental or peripheral to such cleaning work, to other people through the provision of workers' services. A **worker** is defined (in proposed section 7) as a person who is engaged by an employer under a contract of service to perform cleaning work in the contract cleaning industry or a contractor who performs cleaning work in the contract cleaning industry. The definition of **contract cleaning industry** also includes the contract cleaning industry within the meaning of a corresponding law for a reciprocal State or Territory.

The Bill is not designed to cover people engaged directly to perform cleaning work (for example, a person engaged by a house owner to clean the owner's house).

Contractor is defined as a person (other than an employee) who carries out work for another person for fee or reward on the person's own account. The meaning of the term can be expanded by the Minister by an order made under proposed section 8.

Clause 4 defines **cleaning work** as being work that has as its only or main component, the bringing of premises into, or maintaining premises in, a clean condition. The meaning of the term can be expanded by the Minister by an order made under proposed section 8.

Clause 5 defines **employee** for the contract cleaning industry. The meaning of the term can be expanded by the Minister by an order made under proposed section 8.

Clause 6 defines **employer** for the contract cleaning industry as a person who employs one or more persons to perform cleaning work in that industry. The meaning of the term can be expanded by the Minister by an order made under proposed

section 8. The Commonwealth, the State, local government authorities and companies whose only workers are directors (if each of the directors participates in the management of the company or shares its profits) are not employers for the purposes of the definition.

Clause 7 defines **worker** as a person who is engaged under a contract of service by an employer to perform cleaning work in the contract cleaning industry or who is a contractor who performs cleaning work in that industry. It also includes a person who

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is engaged both to perform cleaning work and to supervise other workers regardless of the position title. Specific exclusions from the definition include persons working in a managerial or clerical capacity, persons who are members of a partnership where they share in the profits or participate in its management (or both) and persons employed under a contract of service with the Commonwealth, the State or a local government authority.

Clause 8 enables the Minister administering the Act to expand its coverage by widening the scope of the definitions of **employer**, **contractor**, **employee** and **cleaning work** by order published on the NSW legislation website. The order is a disallowable instrument.

Clause 9 constitutes a Contract Cleaning Industry Long Service Leave Committee (the **Committee**) consisting of nominees of various bodies representing the interests of peak contract cleaning industry stakeholders and chaired by the Chief Executive Officer of the Corporation.

Part 2 Registration

Division 1 The registers

Clause 10 requires the Corporation to keep a register of persons it registers as employers in the contract cleaning industry in NSW (the **employers register**) and a register of persons it registers as workers in that industry (the **workers register**).

Clause 11 details the information to be entered into the employers register.

Clause 12 defines **employer's registration day**.

Clause 13 details the information to be entered into the workers register for each registered worker.

Clause 14 defines **worker's registration day** for workers. It specifies the manner in which a registration day is determined in different circumstances. In any event the earliest registration day is 1 July 2011.

Clause 15 provides for inspection of the registers.

Division 2 Registration of employers

Clause 16 enables the Corporation to register a person as an employer on application under proposed section 17.

Clause 17 requires an employer for the contract cleaning industry to apply for registration in an approved form within one month (or such additional time as the Corporation allows) after becoming an employer. A penalty is prescribed for failure to apply for registration.

Clause 18 requires the Corporation to grant or refuse an application under proposed section 17. Proposed section 32 requires the Corporation to ensure that the employer is notified of a refusal and the reasons for the refusal and proposed section 77 provides for appeals against the refusal.

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Clause 19 requires the Corporation to give each employer it registers a certificate of registration containing certain information and specifying the employer's registration day.

Clause 20 requires a registered employer to give notice to the Corporation within 7 days of any change to information in the certificate of registration. A penalty is prescribed for failure to comply.

Division 3 Registration of workers

Clause 21 enables the Corporation to register a person as worker on the application of the person or the person's employer in accordance with proposed sections 22 and 23, respectively, or on its own initiative under proposed section 25. It also makes provision for persons who are registered within the period of 6 months (or such longer period as the Corporation allows in exceptional circumstances) after the commencement of the proposed Act to be entered on the register as **foundation workers**. Under proposed section 36, a foundation worker is entitled to be credited in the register with 365 days of service.

Clause 22 provides for an application by a person to become a registered worker to be made in an approved form.

Clause 23 requires an employer to apply for registration of a person who is an employee if the person has not registered as a worker within 3 months after he or she commences work for the employer.

Clause 24 requires the Corporation to grant or refuse an application under proposed section 22 or 23 for registration of a worker. Proposed section 32 requires the Corporation to ensure that the applicant is notified of a refusal and the reasons for the refusal.

Clause 25 provides for a person to become a registered worker otherwise than by application through information received by the Corporation showing the person to be a worker.

Clause 26 requires the Corporation to give each worker it registers an annual statement containing certain information, including the number of days credited to the person and the total ordinary remuneration paid to the worker by registered employers during the previous financial year.

Clause 27 requires a registered worker to give notice to the Corporation within 6 months of any inaccuracies in the information in the annual statement.

Division 4 Cancellation and suspension of registration

Clause 28 details the circumstances for cancelling the registration of a registered worker and the required processes, and effect, of cancellation.

Clause 29 details the circumstances for suspending the registration of a registered worker and the required processes, and effect, of suspension.

Clause 30 details the circumstances in which a worker's registration that has been cancelled may be reinstated, and the effect of reinstatement.

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Clause 31 details the circumstances for cancelling the registration of a registered employer.

Division 5 Notices

Clause 32 sets out requirements for the giving of notice by the Corporation about decisions under proposed Part 2.

Part 3 Service credits

Clause 33 defines **engagement period** for the purposes of the proposed Act. It is made clear that, in the case of an engagement period for a worker who is an employee, the continuity of the engagement period is not interrupted by a change of employer. The engagement period is taken to include any day the worker did not perform cleaning work for specified reasons.

Clause 34 stipulates that a worker is to be credited with one day's service for each day in each engagement period, irrespective of whether the worker performed cleaning work on a particular day.

Clause 35 sets some limitations on crediting service including a maximum total of 365 days per financial year.

Clause 36 provides for persons entered in the workers register as foundation workers to be credited with 365 days of recognised service.

Clause 37 provides for the crediting of service where the Corporation is satisfied that, because of circumstance of a kind prescribed by the regulations, the worker was not eligible to be credited with service for a period of up to 3 months.

Clause 38 provides for the crediting of service for each day during which a registered worker's employer is insolvent or an externally-administered body corporate.

Part 4 Returns and records

Division 1 Returns

Clause 39 requires a person who was an employer during a return period to give the Corporation a return for the period within 14 days after the end of the period (a **return period** is defined in proposed section 3 as a quarterly period or such other period as may be prescribed by the regulations). It specifies the information required to be provided in the return and provides that verification of the information provided may be requested by the Corporation. A penalty is prescribed for failure to comply with specified obligations.

Clause 40 provides for an employer to apply for an exemption from lodging returns. The Corporation may grant the exemption if satisfied that the employer no longer engages the worker or workers to perform cleaning work or the employer complies Explanatory note page 6

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with or makes contributions to a similar scheme in another State or a Territory. The exemption may be revoked by the Corporation by written notice.

Clause 41 requires a contractor who was a registered worker during a return period to submit a return for the period, in the approved form, no later than 14 days after the end of the period. It specifies the information required to be provided in the return.

Division 2 Review of ordinary remuneration

Clause 42 enables the Corporation to review the total amount of ordinary remuneration stated for a worker in a return if it considers that it is insufficient or excessive because of the nature of the work performed by the worker in the return period and fix another amount if it decides that the amount stated is not reasonable. It provides a procedure for persons affected by the review to be notified and given the opportunity to make submissions to the Corporation in relation to the remuneration.

Clause 43 requires the Corporation to give notice of its decision on a review under proposed section 42 to the affected persons. If the decision is to fix another amount to that stated in the return the notice must state the effect of the variation.

Clause 44 outlines the effect of the Corporation fixing another amount of remuneration to that stated in a return. The Corporation may require an employer or contractor to pay an additional amount of levy or may refund overpayments made by them.

Clause 45 makes it an offence to fail to pay an additional amount of levy if required to do so under proposed section 44.

Division 3 Records

Clause 46 specifies the particular records that an employer must keep for each worker. These records are to be kept for at least 7 years after the employee stops being employed by the employer. A penalty is prescribed for failure to comply with specified obligations.

Clause 47 specifies the particular records that a contractor must keep. These records are to be kept for at least 7 years after they are made. A penalty is prescribed for

failure to comply with specified obligations.

Part 5 Long service leave levy

Clause 48 provides for the determination of the levy payable by employers. The amount of the levy for a worker is a percentage of the ordinary remuneration paid to the worker determined by the Minister by order from time to time. The order is a disallowable instrument.

Clause 49 provides for the determination of the levy payable by contractors. The amount of the levy is a percentage of the ordinary remuneration of a contractor to be determined by the Minister by order from time to time. The order is a disallowable instrument.

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Clause 50 requires a person who is an employer during a return period to pay to the Corporation the levy determined under proposed section 48. A penalty is prescribed for failure to comply with specified obligations.

Clause 51 requires a person who is a contractor during a return period to pay to the Corporation the levy determined under proposed section 49.

Clause 52 provides for payment of interest on unpaid levies and enables the Corporation to extend the time for payment of, or waive interest payable on, levies in special circumstances.

Clause 53 enables the Corporation to assess the amount of unpaid levies owing and to give a notice of assessment to the person concerned. The person may seek a review by the Committee of the assessment under proposed section 83.

Clause 54 permits the Corporation to enter into an agreement with an agent for the collection of the amounts of long service levies.

Part 6 Long service leave

Clause 55 states that a registered worker is entitled to leave in accordance with the proposed Part.

Clause 56 provides that a registered worker is taken to have completed a year of recognised service for each 365 days of recognised service.

Clause 57 sets out the long service leave formula for the contract cleaning industry used for working out long service leave entitlements.

Clause 58 provides that a registered worker who has 10 years or more of recognised service is entitled under the proposed Act to the number of days of long service leave worked out in accordance with the long service leave formula. This is an entitlement to long service leave of 8.67 weeks after the registered worker has accrued 3650 days' or more service (10 years times 365 days). It also provides that a registered worker who completes further and subsequent periods of 1825 days additional service is entitled to 4.33 weeks' additional long service leave for each such period. Provision is made for workers in the contract cleaning industry who before the commencement of the proposed Act had accrued an entitlement, or after the commencement become entitled, to long service leave under the *Long Service Leave Act 1955* but who have not accrued any entitlement to long service leave with any employer under the proposed Act to be entitled to additional long service leave if they are credited with the requisite additional period of service after registration as workers.

Clause 59 makes it an offence for an employer to fail to grant leave to an employee within a prescribed period after it has accrued.

Clause 60 provides for the making of applications for and payment of leave.

Clause 61 ensures that a worker is not paid for leave in respect of which payment has already been made.

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Clause 62 prohibits payment instead of long service leave except as provided by proposed section 63.

Clause 63 provides for a pro rata payment of long service leave if a worker who has 5 years (1825 days) of service has permanently left the contract cleaning industry and 20 weeks have passed without the worker being credited with any service in the workers register.

Clause 64 provides for a pro rata payment instead of long service leave if a worker has permanently left the industry (for example, because of incapacity or death).

Clause 65 describes the method of working out leave entitlements for proposed sections 60 and 64.

Clause 66 sets out the amount payable to a registered worker for long service leave accrued as an employee.

Clause 67 sets out the amount payable to a registered worker for long service leave accrued as a contractor.

Clause 68 enables regulations to be made making provision for the determination of minimum and maximum amounts for the rate of pay to be used in the calculation of amounts under proposed section 66.

Clause 69 makes it clear that public holidays do not count as leave.

Clause 70 enables payment with respect to long service leave to be made directly to the worker or worker's personal representative where an employer becomes insolvent and specifies that the payment is to be the difference between the employer's payment to the worker and the amount representing the value of the worker's long service leave.

Clause 71 provides for payment for a long service leave entitlement to be deferred.

Clause 72 clarifies that the Corporation is not taken to be an employer of a registered worker who takes or may take a benefit under the proposed Act. The Corporation's liability is confined to long service leave.

Part 7 Appeals to Committee

Division 1 General

Clause 73 makes provision with respect to the procedure for hearing and determining appeals.

Clause 74 provides for the hearing and determination of appeals by 2 or more members of the Committee appointed by the Committee.

Clause 75 makes provision with respect to the notification of appeal decisions.

Clause 76 enables the personal representative of a deceased person to appeal on the person's behalf.

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Division 2 Rights of appeal

Clause 77 enables an employer whose application for registration is refused by the Corporation to appeal to the Committee against the decision.

Clause 78 enables an applicant for registration as a worker whose application is refused by the Corporation to appeal to the Committee against the decision.

Clause 79 enables an employer whose registration is cancelled by the Corporation to appeal to the Committee against the decision.

Clause 80 enables a worker whose registration is cancelled by the Corporation to appeal to the Committee against the decision.

Clause 81 provides for appeals in relation to decisions made by the Corporation concerning exemptions from lodging returns.

Clause 82 provides for the making of appeals against refusals to extend the time for, or waive payment of interest on, levies.

Clause 83 provides for appeals against levy assessments.

Clause 84 provides for appeals against the limitation of long service payments by operation of deemed minimum and maximum rates of pay.

Part 8 Enforcement

Division 1 Authorisation and identification of inspectors

Clause 85 defines *inspector* for the purpose of the proposed Part.

Clause 86 provides for the authorisation of inspectors.

Clause 87 provides for the identification of inspectors.

Division 2 Powers of entry and inspection

Clause 88 enables inspectors to enter premises to determine whether workers in the contract cleaning industry are employed or engaged there and whether the proposed Act or regulations are being complied with or contravened.

Clause 89 prohibits entry into residential premises except with the consent of the occupier or under a search warrant.

Clause 90 provides for the issue of search warrants.

Clause 91 sets out the powers of inspectors to inspect and seize documents and other things.

Clause 92 sets out the powers of inspectors to deal with seized things.

Clause 93 provides for assistance to be given to inspectors.

Clause 94 contains provisions relating to requirements to furnish records or information or answer questions.

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Clause 95 makes it an offence to refuse or fail to comply (without lawful excuse) with requirements imposed under the proposed Part.

Division 3 Other enforcement matters

Clause 96 provides for the service of documents.

Clause 97 provides for the authentication of documents.

Clause 98 enables the Corporation to require an applicant for registration as an employer to provide further information or evidence to enable it to deal with the application.

Clause 99 enables the Corporation to require an applicant for registration of a worker to provide further information or evidence to enable it to deal with the application.

Clause 100 provides for the Corporation to pursue a person believed to be an unregistered employer through a written notice seeking information or documentation within a stated time.

Clause 101 makes it an offence to make false or misleading statements in documents required to be provided under the proposed Act.

Clause 102 makes it an offence to disclose information obtained in administering the proposed Act except in specified circumstances.

Division 4 Proceedings for offences and debt recovery

Clause 103 provides for proceedings for offences to be dealt with summarily before the Local Court.

Clause 104 makes provision with respect to offences by corporations and directors of corporations.

Clause 105 enables charges, fees, levies and other money due to the Corporation under the proposed Act to be recovered by the Corporation as a debt in a court of competent jurisdiction.

Clause 106 enables the Local Court in imposing a penalty for non-compliance with the requirement to register as an employer under proposed section 17 to order the employer to pay to the Corporation the amount of levy that the employer would have paid if the person had complied with the proposed Act since becoming registered.

Clause 107 provides for the issue of evidentiary certificates in relation to levy

payments.

Part 9 Relationship to other laws

Clause 108 defines *relevant law*.

Clause 109 provides for registered workers with entitlements accrued after the commencement of the proposed Act under both the proposed Act and the *Long Service Leave Act 1955* in respect of engagement periods during which the person concerned was a registered worker under the proposed Act.

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Service Leave Act 1955 or other laws to elect the law under which benefits are to be taken.

Clause 110 provides for the reimbursement by the Corporation of employers who make payments pursuant to an election under proposed section 109.

Clause 111 provides for the reimbursement by the Corporation of employers who make payments in respect of entitlements under the *Long Service Leave Act 1955* in respect of engagement periods during which the person concerned was a registered worker under the proposed Act.

Part 10 Reciprocal arrangements

Clause 112 provides for the Minister to enter into an agreement to administer the law of another State or Territory about making long service leave payments to persons engaged in the contract cleaning industry in the other State or Territory. The matters that may be included in the agreement are detailed in the proposed section.

Clause 113 enables a registered worker who has an entitlement to long service leave under the proposed Act and a corresponding law to apply to the Corporation for payment of the amount under the corresponding law if a reciprocal agreement is in place.

Clause 114 provides for the Corporation to reimburse a reciprocal authority that makes payments under a corresponding law for a long service leave entitlement under the proposed Act for work done in the contract cleaning industry.

Part 11 Miscellaneous

Clause 115 protects persons from personal liability for matters or things done in good faith for the purpose of executing the proposed Act.

Clause 116 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 117 provides for the review of the proposed Act.

Schedule 1 Constitution and procedure of Committee

Schedule 1 contains provisions relating to the constitution and procedure of the Committee.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

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Schedule 3 Amendment of other Acts and regulation

Schedule 3 makes consequential amendments to the Acts and the regulation specified in the Schedule.