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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

**LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY)
(AMENDMENT) BILL 1991**

EXPLANATORY MEMORANDUM

**Circulated by authority of
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AUSTRALIAN CAPITAL TERRITORY

LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991

OUTLINE:

This Bill amends the *Long Service Leave (Building and Construction Industry) Act 1981* to provide for equal opportunity in appointment and promotion of staff, and to ensure that these are based on the principle of merit. The Bill also requires the establishment of an equal opportunity program to assist in preventing unlawful discrimination and to promote equal opportunity for women and people in minority groups, as well as for others, to advance their careers with the Long Service Leave (Building and Construction Industry) Board ('the Board').

These amendments correspond to similar amendments being made to the establishing Acts of ACT public authorities as an integral part of the package of legislation surrounding the introduction of the *Human Rights and Equal Opportunity Bill 1991*.

The amendments are based on the equal opportunity provisions of the *Public Service Act 1922* and will therefore make the *Long Service Leave (Building and Construction Industry) Act* consistent with the law applying in the rest of the ACT public sector.

Financial Considerations: There are no financial considerations involved.

FORMAL CLAUSES

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and definition of the Principle Act.

AMENDMENTS

Clause 3 amends the Principal Act by adding a new Division called "Division 4 - Personnel Management" at the end of Part II, which contains two new sections, namely section and 25D.

Section 25C is a definition section, establishing the meaning of the words "designated group"; "employment matter" referred to below in subsection 25D(1); "equal employment opportunity program" referred to below in subsections 25D(1) and 25D(4) to 25D(8); "relevant staff organisation" referred to below in subsection 25D(4); and "unjustified discrimination" referred to below in subsection 25D(1).

Section 25D contains subsections (1) to (9):

Application of the Bill to the Board's 'powers in relation to employment matters'

The key provisions of the Bill appear in subsections 25D(1) and 25D(2). These apply respectively

- to the exercise of the Board's 'powers in relation to employment matters'
- in relation to selection of persons for engagement as employees of the Board, and to selection for advancement with the Board.

An 'employment matter' is defined in section 25C and includes selection for engagement as an employee, for advancement with the Board, transfer, training and staff development, conditions of service and any other matter related to the employment of persons by the Board.

Prohibition of unjustified discrimination, patronage and favouritism

Paragraph 25D(1)(a) provides that decisions in relation to employment matters shall be made without unjustified discrimination, patronage and favouritism. 'Unjustified discrimination' as defined in Section 25C includes discrimination on the ground of age or social origin, and discrimination prohibited by the *Human Rights and Equal Opportunity Act 1991*. According to Section 25C discrimination is not unjustified and is therefore permissible if:

- it is not unlawful under the *Human Rights and Equal Opportunity Act 1991*, is essential for the effective performance of the work required and is prescribed; by regulation; or
- it is not unlawful and is in accordance with an equal opportunity program for the Board or other program established by the regulations.

Paragraph 25D(1)(b) provides that employment decisions must be made with regard to the equal opportunity program of the Board.

An equal employment opportunity program is defined in section 25C as a program designed to ensure that unjustified discrimination against designated groups such as Aboriginal people is eliminated and that such groups and women can have, along with others, equal opportunity for advancement and career development.

Subsections 25D(4) to 25D(7) set out procedures for establishing and reviewing the programs.

Application of Merit Based Principles to Employment Decisions

Subsection 25D(2) requires that decisions on the selection of persons for engagement by the Board as employees and on selection for advancement with the Board are made in accordance with procedures ensuring

- potential applicants, as far as is practicable, have a reasonable opportunity to apply for positions; and

assessment is on the basis of merit, that is the relative suitability for the position, given the nature and requirements of the job, and the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicant.

The subsection does not apply to temporary staff, that is, those employed for a period of less than 3 months.

The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. It is not the intention of the Bill to impose impractical measures or unreasonable and unaffordable advertising and selection procedures as a requirement for appointment and advancement.

Subsection 25D(3) permits the making of reports or recommendations for carrying out of the principles established by this Act.

Equal opportunity program

Subsection 25D(4) requires the Chairperson of the Board to develop and to review from time to time, after consultation with relevant staff organisations and other appropriate persons, an equal employment opportunity program for the Board.

A 'relevant staff organisation' is defined in subsection 25C as an organisation within the meaning of the *Industrial Relations Act 1988* (C'th) of which employees of the Board would be eligible for membership, and which is party to an award which covers employees of the Board.

Subsections 25D(5), (6), (7) and (8) require the Chairperson to establish the program as soon as practicable, at least within 12 months of the commencement of this Act, to provide details of the program to the Head of Administration and to take any necessary action to give effect to the equal employment opportunity program. The Head of Administration may issue guidelines on the provisions, development, implementation or review of the program.

Measures adopted by the smaller statutory authorities in establishing equal employment opportunity programs will not have to be as extensive or complex as those of the larger authorities. Also EEO programs may be adapted to the particular nature and needs of the authority involved. Details can also be dealt with in the Guidelines as established by the Head of Administration.

Subsection 25D(9) requires the Board to furnish to the Minister an annual report on the operation of the program.

Clause 4 provides for substitution of the gender-neutral term 'Chairperson' for the term 'Chairman' wherever occurring.