

2012

**THE LEGISLATION ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**LONG SERVICE LEAVE (PORTABLE SCHEMES) (SECURITY
INDUSTRY) AMENDMENT BILL 2012**

EXPLANATORY STATEMENT

**Presented by
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OVERVIEW

The ACT Government has agreed to extend the portable long service leave scheme under the *Long Service Leave (Portable Schemes) Act 2009* to the security industry. The Government also agreed that the Long Service Leave Authority would provide for the administrative arrangements for the new security industry scheme. This Bill reflects and implements those commitments.

The Long Service Leave (Portable Schemes) (Security Industry) Amendment Bill 2012 (the Bill) creates a new schedule to the *Long Service Leave (Portable Schemes) Act 2009*. The Bill provides amendments and a schedule specific to the security industry to establish a mandatory portable long service leave scheme for its employees and for employer organisations.

It is anticipated that the proposed Security Industry Portable Long Service Leave Scheme (the Scheme) will support security industry sector workers in a number of ways. The Scheme will protect the basic entitlement to long service leave for all security industry workers even where this is accrued by service to multiple organisations, similar to government workers' entitlement to Long Service Leave even if accrued by service to multiple government departments.

It is expected that the Scheme will ensure fair access to long service leave entitlements for security employees and address the effects of the high level of mobility within the security industry.

Administrative arrangements

The administration of the Long Service Leave (Portable Schemes) (Security Industry) Amendment Bill 2012 will be the responsibility of the Chief Executive/Registrar of the ACT Long Service Leave Authority (LSL Authority).

Financial arrangements

The LSL Authority is currently required to maintain separate operations for the purposes of the Board's secretariats, financial and annual reporting and fund investment. These requirements are met by the same administrative unit.

Mirroring the arrangements of the Construction, Cleaning and Community Sector Industry Long Service Leave Schemes, the Bill quarantines the assets of each industry's long service leave fund. As a consequence the security industry scheme will maintain the requirement to produce a separate financial statements and reporting requirements.

Consultation

An exposure draft of the Bill was developed and subject to consultation from 21 December 2011 until March 2012. Targeted consultation also took place with worker and industry representatives in order to inform the exposure draft and final Bill.

Financial implications

As an independent ACT Statutory Authority, the LSL Authority is self-funded and does not rely on the ACT Budget for support. The ACT Government has committed to providing the LSL Authority with initial establishment costs of the Scheme. The Scheme will be self-funded on an ongoing basis by levies contributed.

Strict liability offences

Where clauses in the Bill cross reference clauses in the *Long Service Leave (Portable Schemes) Act 2009* these refer to offences incorporating strict liability. The offences incorporating strict liability elements have been carefully considered during the Bill's development. The strict liability offences arise in a regulatory context where for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, required the sanction of criminal penalties.

The security industry, in particular, is a regulated industry and employers must have a license to conduct business. Consequently, employers can reasonably be expected to know the requirements of the law. To allow the effective prosecution of offences, the mental, or fault, element can justifiably be excluded. This ensures protection of worker entitlements and public revenue. Additionally, people who owe a duty of care to workers, such as employers, as opposed to members of the general public, can be expected to be aware of their duties and obligations to their employees.

Unless some knowledge or intention ought to be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time of committing the strict liability offences is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

Notes on clauses

Part 1 Preliminary

Clause 1 – Name of Act

This is a technical clause that names the Act. The name of the Act is the *Long Service Leave (Portable Schemes) (Security Industry) Amendment Act 2012*.

Clause 2 – Commencement

This clause provides that the Act will commence on a day fixed by the Minister by written notice.

Clause 3 – Legislation amended

This clause establishes that the Long Service Leave (Portable Schemes) (Security Industry) Bill 2012 amends the *Long Service Leave (Portable Schemes) Act 2009* (the Act).

Clause 4 – What is a covered industry? New section 6(d)

This clause provides that the security industry is a *covered industry* for the purposes of establishing the portable long service leave scheme (security industry).

Clause 5 – Section 6, new note

This clause refers, for the purpose of section 6, to the definition of *security industry* at schedule 3A, 3A.3.

Clause 6 – When is work outside the ACT work? Section 13(2), new note

This clause refers, for the purpose of section 13(2), to the definition of security work at schedule 3A, 3A.2.

The amended section will effectively provide that work carried out by an employee, or by a contractor, outside the ACT is taken to work in a covered industry if the work would, if carried out in the ACT be work in the covered industry. The employer, or the contractor, must give the authority a quarterly return in relation to the work and pay the authority the levy payable by the employer or the contractor for that quarter.

Clause 7 – New schedule 3A

This clause sets out a new schedule for the Act.

Clause 3A.1 – Long service leave - security industry

This clause establishes that a registered worker for the security industry is entitled to long service leave in accordance with the new Schedule 3A.

Clause 3A.2 – What is security work?

This clause sets out what type of work is considered to be *security work* and provides for the Minister to declare work that will not be considered for the security industry.

Clause 3A.3 – What is the security industry?

This clause establishes that service in the security industry for this purpose includes the industry in which security activities are undertaken by people licensed to undertake the activities under the *Security Industry Act 2003*.

This clause restricts security activity to an activity within the meaning of the *Security Industry Act 2003*, section 13(1)(a) to (h).

It also allows for the security industry, in relation to a reciprocating State, to include the security industry within the meaning of the corresponding law of the State. This is not exhaustive and the clause also provide that the Minister may declare work not to be work in the security industry.

Clause 3A.4 – Court or tribunal – not employer

This clause prescribes that a court or tribunal is not considered to be an employer in the security industry for the purposes of this Act.

Clause 3A.5 – Years of recognised service – security industry

This clause provides that a registered worker will be taken to have completed a year of recognised service in the security industry if they have completed 365 days of recognised service.

Clause 3A.6 – Long service leave formula – security industry

This clause sets out the long service leave formula for calculating entitlements for the security industry:

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

RS means the registered worker's number of days of recognised service.

W means the number of weeks of long service held by the worker.

Clause 3A.7 – Amount of leave – security industry

This clause provides that a registered worker who has 7 years or more recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the security industry.

It also provides that a registered worker for the security industry is entitled to additional long service leave worked out in accordance with the long service leave formula for the security industry if the worker has fulfilled two pre-conditions. A worker must become entitled to long service leave under this Act for work done in that industry. The worker must also be credited with the additional days in the workers register after becoming entitled to long service leave.

Clause 3A.8 – Grant of leave by employers – security industry

This clause provides that an employer for the security industry commits an offence if the employee's long service leave accrues and the employer does not grant that employee the long service leave before the end of the prescribed period.

The maximum penalty for this offence is 50 penalty units.

The clause also provides that long service leave must not be granted for a period of less than 2 weeks.

The clause also provides that an employer of a registered employee for the security industry also commits an offence if the employer has granted the employee long service leave and the employer does not give the employee a written statement of the day when the long service leave starts and ends. This must occur no later than 2 months after the day when the long service leave starts or, if the employer and employee agree on a shorter period, before the start of the period agreed.

The maximum penalty for this offence is 50 penalty units.

An offence against this is a strict liability offence.

Finally, the clause clarifies that, for this section, *prescribed period*, for long service leave accrued by a registered employee for the security sector of an employer, means –

- (a) 6 months after the day the leave accrues; or
- (b) if the governing board has allowed, on application by the employer or the employee, a period longer than 6 months, the period allowed by the board; or
- (c) if the employer and employee agree on a period longer than 6 months, the period agreed.

Clause 3A.9 – Entitlement to payment instead of leave – security industry

This clause applies to a registered worker for the security industry who has at least 5 years recognised service if:

- (a) the worker has left the industry because of total incapacity; or
- (b) the worker has reached the prescribed retiring age; or
- (c) the worker has died.

This clause also provides that, if the governing board is satisfied that clause applies to the worker, the worker is entitled to payment instead of long service leave or the number of weeks long service leave worked out in accordance with the long service leave formula.

Finally, the clause clarifies that, for this section, *prescribed retiring age*, means –

- (a) for a registered worker who has been granted a service pension under the Veterans Entitlements Act 1986 (Cwlth), section 38 (Eligibility for partner service pension) – the age at which the worker first receives payment of the service pension; or
- (b) in any other case – 55 years.

Clause 3A.10 – Payments for leave – security industry

This clause sets out that a registered employee who has been granted long service leave under clause 3A.7, or a registered contractor for the industry who is entitled to long service leave, may apply to the authority for payment for the leave.

It also provides that, if the registrar is satisfied that the applicant is entitled to long service leave under this Bill and has been granted leave by their employer, then the authority must pay to the applicant the amount payable under clause 3A.12 (How are payments worked out for the security industry?)

This clause also provides that the authority must pay an applicant any amount payable under this clause no later than 21 days after the worker's application has been made.

Clause 3A.11 – Payment instead of leave – security industry

This clause provides that, if a registered worker for the security industry is entitled to payment instead of long service leave under this Act, the worker may apply to the authority for the payment.

However, an application on the ground that the employee has ceased work because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry. The governing board may also require an applicant to submit to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.

The clause also provides that all fees or charges payable for such an examination are to be paid by the authority and that, if an applicant fails to comply without reasonable excuse, the governing board may refuse the application.

If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under clause 3A.12 (How are payments worked out for the security industry?)

Clause 3A.12 – How are payments worked out for the security industry?

This clause provides that, for clause 3A.10 (Payment for leave – security industry) and clause 3A.11 (Payments instead of leave – security industry), the amount payable to a registered worker for, or instead of, long service leave is, for an employee – in accordance with clause 3A.13 (Leave payments for service as registered employee – security industry) or, for a contract, in accordance with clause 3A.14 (Leave payments for service as registered employee – security industry).

This clause also provides that long service leave must be taken in the reverse order in which it accrued and if payment instead of long service leave is being made, the payment is made in relation to the leave in the order in which it was accrued.

Clause 3A.13 – Leave payment for service as registered employee – security industry

This clause sets out, for clause 3A.12, the amount payable to registered worker for long service leave for service accrued as a registered employee for the security industry, as the amount worked out as follows:

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

In this formula:

D means the number of days of service credited to the registered worker in the workers register to which the payment relates.

designated day means –

- (a) if the registered worker is taking long service leave – the day the leave begins; and
- (b) if the registered worker is being paid instead of taking long service leave – the day the payment is made.

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

- (a) the most recent 2 quarters of service as a registered worker before the designated day;
- (b) the most recent 4 quarters of service as a registered worker before the designated day;
- (c) the most recent 20 quarters of service as a registered worker before the designated day.

Clause 3A.14 – Leave payments for service as registered contractor – security industry

This clause provides that, for clause 3A.12 (How are leave payments worked out for the security industry?), the amount payable to a registered worker for the security industry for long service leave, for service accrued as a contractor, is the total of the following for the service:

- (a) any amounts paid by the worker to the authority under section 56 (Determination of levy – contractors);
- (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for leave.

The governing board must determine an interim rate of interest prior to the determination of the rate above.

The determined rate of interest must be determined at the end of each financial year for the previous financial year and either:

- (a) be 75% of the rate of the return for the financial year in which the determination is made if the security industry scheme funds invested made a return; or
- (b) be nil if the fund did not make a return or made a loss.

Clause 3A.15 Payments by authority on reciprocal authority's behalf – security industry

This clause applies to a registered worker for the security industry who has a long service leave entitlement under this Act and under a corresponding law.

This clause provides that the worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law. It also provides that the authority must make the payment the amount worked out if authorised to do so but the reciprocal authority.

Clause 3A.16 Payments by reciprocal authority on authority's behalf – security industry

This clause applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the security industry.

It provides that, if the authority is notified about such a payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount to be worked out as follows:

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

For the formula:

D means the number of days service credited to the person in the workers register for service as an employee and to which the payment relates.

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

Finally, this clause clarifies that if the authority makes a reimbursements under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.

Clause 3A.17 Service credit – security industry – s 64

This clause provides that a registered worker for the security industry is to be credited with 1 day service in the worker register for each day in each service period of the worker on or after the worker's registration day. One day's service also includes a day when the worker does not carry out security industry work.

This clause also clarifies that a registered worker in the security industry must not be credited with more than 365 days service in one financial year.

Clause 3A.18 – Records of payments and service – security industry

This clause provides that, if the authority pays an amount to a registered worker for leave or in-lieu of leave or reimburses a reciprocal authority, the authority may delete from the workers register the details relating to the period of service for which the worker has been paid.

However, the clause also provides that the authority must keep another record of the period of service, the amount paid to the worker for long service leave or in-lieu of long service leave and the period of long service leave (if any) granted to or taken by the worker.

Clause 3A.19 – Public holidays not to count as leave – security industry

This clause applies if a public holiday falls during a period of long service leave taken by a registered employee for the security industry. The clause provides that, if that is the case, the period of long service leave is increased by 1 day for each public holiday.

Clause 8 – Schedule 4, item 20 to 23

These four item amendments allow for the table set out in this clause to be substituted for parts of Schedule 4 as listed. This Schedule sets out in a table the decisions made by the relevant decision maker (either the registrar or the governing board) as well as the person who may apply to the ACAT for review of the decision by the relevant decision maker.

Clause 9 – Schedule 3A and 4 (as amended)

This clause allows for the security industry schedules, which have been amended, to be renamed from schedules 3A and 4 to schedules 4 and 5.

Clause 10 – Dictionary, definition of *covered industry schedule*, new paragraph (d)

This clause adds the following for the definition of *covered industry schedule* –

- (d) for the security industry – schedule 3A.

Clause 11 – Dictionary, definition of *long service leave formula*, new paragraph (d)

This clause adds the following for the definition of *covered industry schedule* –

- (d) for the security industry – see schedule 3A, section 3A.6.

Clause 12 – Dictionary, new definitions of *security industry* and *security work*

This clause provides for the inclusion of new signpost definitions of *security industry* and *security work*. This refers to sections 3A.3 and 3A.2 of schedule 3A respectively.