

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

LONG SERVICE LEAVE (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

**Circulated by authority of
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General Outline

The Bill amends the *Long Service Leave Act 1976* by introducing a range of minor and technical amendments aimed at streamlining the Act, overcoming ambiguity in interpretation and making it more user friendly.

Title

Clause 1 refers to the short title of the amendment Act.

Commencement

Clause 2 provides for the Bill to commence on notification in the Gazette or, in relation to the substantive provisions, within a period of 6 months after Sections 1, 2 and 3 commence. This is a standard commencement clause.

Clause 3 identifies the Principal Act being amended by the Bill.

Interpretations (definitions)

Clause 4 amends the interpretations (definitions) section of the Act.

Clause 4(a) alters the definition of agreement so that agreement means agreement under the *Workplace Relations Act 1996*.

Clauses 4(b) and (d) replace the reference to the former *Conciliation and Arbitration Act 1904* with the *Workplace and Other Legislation Amendment Act 1996*

Clause 4(c) more accurately describes the definition of associated company.

Clause 4 (e) clarifies the definition of continuous service by specifying that it is in relation to an employee.

Clause 4(f) amends the definition of continuous service to ensure that continuous service covers a period of traineeship as well as apprenticeship.

Clause 4(g) enhances the definition of employee by making specific reference to a casual employee, thus overcoming any ambiguity in the Act as to its coverage of casual employees. This Clause also deletes the current exclusion section of the definition of employee relating to persons covered under the *Long Service Leave (Building and Construction Industry) Act 1981* (these provisions are covered by Clause 4(k) and (l))

Clause 4(h) includes the words performance pay in the definition of ordinary remuneration to reflect the current trend towards the use of performance pay

Clause 4(j) inserts a definition for several new terms used in the Bill. (i) approved training agreement, (ii) authorised officer (which replaces the use of the term inspector), (iii) casual employee (this definition is derived from the *Workplace Relations Act 1996*) and Court decisions which distinguish between irregular casual employment and regular and systematic casual employment); (iv) trainee; and (v) training agreement.

Clause 4(k) alters the reference to the relevant long service leave Act with respect to an election available to employees under Section 63 of the *Long Service Leave (Building and Construction Industry) Act 1981*. (This Clause needs to be read in conjunction with Clauses 4(g) and (l))

Clause 4(l) repeals a part of Section 2(2A) and replaces it with a subsection which clarifies the entitlement of employees in the building and construction industry to the benefits of the Principal Act or the *Long Service Leave (Building and Construction Industry) Act 1981*. The purpose is to enhance the interaction between the operation of the Principal Act and the *Long Service Leave (Building and Construction Industry) Act 1981* by ensuring that an employee who moves to a non award classification (in an Award defined by the Regulations to the Building and Construction Industry Act is not inadvertently excluded from the effect of either Act.

Clause 4(m) clarifies that service outside the Territory on a temporary basis does not break the continuity of service.

General Provisions

Clause 5 clarifies that the period of service upon which an entitlement to long service leave accrues, must be with one employer

Clause 6 inserts the standard penalty provision in Section 6 which deals with the granting of leave. The standard penalty provisions throughout the Act distinguishes the penalty applying to a natural person from the penalty applying to a body corporate.

Clause 7(a) specifies that the method of calculating payment for long service leave for a casual employee is the same for a part time employee.

Clause 7(b) inserts a new subsection 7(c) which provides a method of calculation of long service leave payment in circumstances where the employment status of an employee is altered from full time to part time or casual within two years of a long service leave entitlement falling due.

Clause 8(a) replaces the current penalty provision in Section 8, which specifies the manner in which long service leave is to be paid, with the new standard penalty provision

Clause 8(b) clarifies that if, after payment of long service leave is made to an employee (usually prospectively), the amount of ordinary remuneration to which the employee is entitled increases, then the employer is obliged to pay the increase in the same form as the original payment was made.

Clause 9 clarifies that the amount payable in lieu of long service leave is payable with respect to a casual employee as well as to part time and full time employees. The Clause also provides for completed months of service, not just completed years of service, to be included in the calculation of a long service leave entitlement.

Clause 10 provides for completed months of service, not just completed years of service to be included in calculations where payment for ineligible service after ten years applies.

Clause 11 amends Section 11C of the Act which relates to pro rata long service leave entitlements. It adds meaning the circumstances that constitute a situation whereby an employee may terminate his or her employment and attract an entitlement to a prorata payment. The Clause also provides that completed months of service, and not just completed years of service, are included in calculations where prorata payments apply. This clause will alter the title of the Section to more readily identify its purpose.

Clause 12 inserts casual employees into the subsection of the Act which identifies the basis for calculating ordinary remuneration in relation to entitlements under Section 11A, 11B and 11C of the Principal Act.

Records

Clause 13 repeals the existing Section specifying the records which must be kept by an employer pursuant to the operation of the Act, and replaces it with a more comprehensive and relevant list of the records to be kept. Also, Clause 12 clarifies the penalties which apply to this section, and in particular, specifies the different penalties which apply to natural persons and to a body corporate. It specifies the penalty for the offence of failing to keep records and failing to make available records when requested by an authorised officer. The penalties specified are standard for offences of the nature identified. The Clause also increases from 6 to 7 years the period for which an employer must keep records to ensure consistency with like provisions in other ACT Government legislation. The clause also replaces the term inspector with the term authorised officer.

Grievance Management and Compliance Procedures

Clause 14 in general repeals the Section of the Principal Act establishing inspectors. It also introduces a new Section 13, establishing grievance management and compliance procedures. The grievance management regime establishes a two part procedure; (i) a conciliation process; and (ii) a compliance direction power.

New Section 13 provides for the appointment by the Chief Executive of a Registrar of Long Service Leave.

New Section 13A provides for the appointment of authorised officers (formerly inspectors) The Chief Executive may appoint a Commonwealth public servant as an authorised officer

New Section 13B provides for the issuing of identity cards to the Registrar and authorised officers, by the Chief Executive.

New Section 13 C sets out the powers of entry of authorised officers which enables such officers to enter premises with the consent of the employer, to inspect records and to make copies, or to take extracts, of records

New Section 13D provides a procedure for dealing with complaints The central feature of the new Section is that it empowers an authorised officer to require the parties in dispute to attend a conciliation conference to attempt to resolve disputes under the legislation.

New Section 13E empowers an authorised officer to require an employer, by notice in writing, to comply with the Act.

New Section 13F provides, at the request of an employer, for a review by the Registrar of a requirement to comply notice issued by an authorised officer under new Section 13E

New Section 13G provides for a review of a decision of the Registrar, by the Administrative Appeals Tribunal.

New Section 13H establishes a penalty for obstructing or hindering an authorised officer and for contravening a requirement to comply with the Act.

New Section 13J indemnifies the Registrar and authorised officers from civil or criminal proceedings in relation to actions taken in connection with the performance of their powers under the Act or Regulations.

New Section 13K provides for the Registrar to delegate the Registrar's powers except the power of review under new Section 13F.

Regulations

Clause 14 repeals the existing Regulations making power and replaces it with a standard Regulation making powers.