
1990

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

**LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY)
(AMENDMENT) BILL 1990**

EXPLANATORY MEMORANDUM

Circulated by Authority of the Minister of Finance and Urban Services

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LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY)
(AMENDMENT) BILL 1990

The *Long Service Leave (Building and Construction Industry) Act 1981* established a scheme to enable workers in the ACT building and construction industry to receive paid long service leave after ten years service in the industry.

The scheme is funded by contributions from employers which are paid into a fund administered by the Building and Construction Industry Long Service Leave Board (the Board). The Board is appointed by the Minister and comprises employer and employee representatives under an independent chairperson.

The scheme is similar to those existing in New South Wales, Victoria, South Australia, Western Australia and Tasmania.

The effect of the Long Service Leave (Building and Construction Industry) (Amendment) Bill 1990 is to allow long service leave payments to be calculated more equitably in accordance with a revised formula, to permit the Board to allocate a proportion of employer contributions to a newly established building and construction industry training fund and to exempt the Board from a requirement to obtain the approval of the Minister for investments made where investments are made in a manner approved by the Chief Minister under section 90 of the Audit Act 1989.

Details of the Bill are included in the Attachment.

The Bill will have no effect on revenue.

ATTACHMENT

**LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY)
(AMENDMENT) BILL 1990**

Clause 1 provides that the Bill, when made, may be cited as the Long Service Leave (Building and Construction Industry) (Amendment) Act 1990.

Clause 2 provides for the commencement of clauses 1 to 4 (inclusive) and clauses 7 and 13. These sections will be taken to have commenced on 1 January 1990. The remaining provisions commence on the day on which the Act is notified in the *Gazette*.

Clause 3 provides that the Principal Act is the *Long Service Leave (Building and Construction Industry) Act 1981*.

Clause 4 amends section 6 of the Principal Act by inserting new paragraph 6 (ca) which establishes the Building and Construction Industry Training and Projects Fund.

Clause 5 amends section 7A of the Principal Act by deleting from subsection 7A (1) a general power to delegate and by omitting subsections 7A (2) and (3) which also related to the exercise of a delegation for the purposes of the Act. Such provisions are no longer required. The Board retains appropriate power to delegate any of its powers.

Clause 6 amends section 9 of the Principal Act by omitting subsections 9 (4) and (5) which provided for aspects of appointment of persons now provided for under the *Interpretation Act 1967*.

Clause 7 inserts a new Division 2A entitled Building and Construction Industry Training and Projects Fund after section 19 of the Principal Act. Division 2A inserts new sections 19A, 19B, 19C and 19D which provide for the establishment of a fund for training and other projects, for powers of the Board in relation to the fund and the application of fund money.

New section 19A defines the Fund as the Building and Construction Industry Training and Projects Fund.

New section 19B relates to the establishment of the Fund. Subsection 19B (1) requires the Board to establish and maintain the Fund. Subsection (2) provides that the Fund is to consist of money provided for under clause 13 of the Bill, amounts transferred to the Fund under subsection 19C (1) and income derived from the investment by the Board of the money of the Fund.

New section 19C details the powers of the Board. Subsection 19C (1) provides that, from 1 January 1990 and for each 3 month period following that date, the Board may transfer money to the Fund of an amount not exceeding 10% of the sum of the amounts paid to the Board under sections 37 and 38. Subsection 19C(2) provides that the Board may, subject to section 23, invest Fund money as it sees fit.

New section 19D deals with the application of Fund money. Section 19D provides that the Minister may apply money out of the Fund for training in the building and construction industry or for purposes connected with that industry, and, in doing so shall consider any written recommendation in relation to the application of the money of the Fund made by the ACT Regional Building and Construction Industry Training Council.

Clause 8 amends section 23 of the Principal Act by adding new subsection (2) which allows the Board to invest an amount exceeding \$100,000 of the money of the Board without the approval of the Minister when the investment is made in a manner approved by the Chief Minister under section 90 of the *Audit Act 1989*.

Clause 9 amends section 24 of the Principal Act by omitting references to the Australian Government Actuary and providing for the appointment by the Treasurer of an actuary for the purposes of conducting triennial investigations into the state and sufficiency of the money of the Board.

Clause 10 amends section 55 of the Principal Act by inserting new subsection (4) which provides that where an applicant for long service leave lodges an application not later than 14 days prior to the date of entitlement of such leave and makes such a request in the application, the Board shall pay the applicant an amount to which he or she is entitled not later than 7 days prior to the date of entitlement.

Clause 11 amends section 56A of the Principal Act by inserting new subsection (5) which provides that where an applicant for long service leave under subsection 56A (1) lodges the application not later than 28 days before the date of entitlement of such leave and requests such payment, the Board shall pay the applicant any amount under subsection (4) not later than 7 days prior to the date on which the applicant becomes entitled to the long service leave.

Clause 12 amends section 57 of the Principal Act by omitting paragraph (1) (b) which provided for a formula for the calculation of long service leave entitlements and substituting new paragraph (1) (b) which specifies a formula which provides a more equitable method of calculation of long service leave entitlements.

Paragraph 12 (a) outlines the revised formula. The formula in omitted paragraph (1) (b) allowed for the calculation of long service leave payments where a worker's weekly average wage was less than normal owing to circumstances such as a period of unpaid sick leave. The revised formula provides for the application of the worker's usual weekly average wage in such circumstances for either the four months or the twelve months prior to the long service leave and requires the Board to pay the greater of the two calculations.

Subclause 12 (b) inserts new subsection 57 (3) which provides for interpretation for the purposes of subsection 57 (1).

Clause 13 is a saving provision which allows for money previously set aside in anticipation of the establishment of the Fund to constitute money of the Fund. It also provides that the action of the Board in setting aside money in this way is valid and effectual for all purposes as if Part II Division 2A of the Act had been in force when the action was taken and the money was transferred in accordance with that Division.