

2008

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

**LONG SERVICE LEAVE
LEGISLATION AMENDMENT BILL 2008**

EXPLANATORY STATEMENT

**Presented by
Mr Andrew Barr MLA
Minister for Industrial Relations**

Overview

This Bill will improve access to long service leave (LSL) in the private sector under the *Long Service Leave Act 1976* (1976 Act) and correct an anomaly created by the 2007 amendments to the *Long Service Leave (Building and Construction Industry) Act 1981* (1981 Act) concerning employer reimbursements in the building and construction industry portable LSL scheme.

In 2005, the 1976 Act was amended to change the eligibility period for LSL in the private sector from ten years to seven years. However, the calculation of entitlement is still determined in five-year blocks once the initial seven-year eligibility period has elapsed. This has led to a situation that those choosing to take their entitlement in the last two-years of the existing five-year entitlement block find themselves disadvantaged in comparison to the pre-2005 model.

Under the previous legislation, employees choosing to take LSL after 10 or 11 years of service would be entitled to 8.67 weeks of leave. Under the current legislation, employees choosing to take LSL after 10 or 11 years of service are only entitled to 6.07 weeks of leave. This represents an entitlement loss of approximately two and a half weeks, as they are not entitled to further leave until at least twelve years have elapsed.

The disadvantage to those under the existing legislation is to be dealt with in this Bill by amending the 1976 Act to remove the five-year entitlement blocks and to allow for per annum accrual of entitlements once seven years of service has been achieved.

This will allow employees to take their LSL at any time after seven years without being disadvantaged when compared against the pre-2005 model. This amendment improves the legislation by simplifying the practical application of the Act.

In 2007, amendments to the 1981 Act sought to improve the administration of the building and construction and contract cleaning portable LSL schemes by making them more closely aligned and simplifying the reporting requirements and the calculation of service and payments.

A new formula was introduced to reimburse employers where employees elected to take LSL under the 1976 or other Act, instead of under the portable scheme. This Bill will remove the formula and introduce a less complex method for determining what is to be reimbursed to employers.

Notes on Clauses

Part 1 - Preliminary

1. Name of Act.

This clause establishes the name of the Act as the *Long Service Leave Legislation Amendment Act 2008*.

2. Commencement.

This is a formal provision specifying that the Act will commence on the day after its notification day.

Part 2 - Long Service Leave Act 1976.

3. Legislation amended – pt 2.

This clause specifies that Part 2 of the Bill amends the *Long Service Leave Act 1976*.

4. Benefits under this Act and the LSL (BCI) Act Section 2D (1) (b).

This clause omits a reference to section 63 of the *Long Service Leave (Building and Construction Industry) Act 1981* that is out of date.

5. Benefits under this Act and the LSL (CCI) Act Section 2E (1) (b).

This clause omits a reference to section 64 of the *Long Service Leave (Contract Cleaning Industry) Act 1999* that is out of date.

6. Entitlement to long service leave Section 3 (2).

This clause provides for LSL entitlements to be accessed by employees on a year-to-year basis after an initial seven year period.

7. Grant of leave, Section 6 (1) (a).

This clause alters the offence provisions of the Act concerning the granting of LSL by employers to employees. New section 6 (1) (a) makes it an offence if an employer does not provide an employee with their leave entitlement if the employee asks for four weeks or more of LSL. This new definition was necessary because the Bill makes it possible for employees to access leave after an initial seven year period on a year-to-year basis, which may be as little as 4.3 days of leave.

8. Section 6 (5).

This is a consequential amendment to the change to Section 6 (1) (a).

9. Pay in lieu of long service leave, Section 11 A (4).

This clause omits the reference to LSL accruing in five year blocks after an initial seven year period with respect to pay in lieu for LSL.

10. Pay for ineligible service after 7 years, Section 11 B.

This clause omits the section that previously dealt with pay arrangements for those employees who had completed an initial seven years of service and then ceased employment before a further five years of service had been completed. It is now intended that accrual and access to LSL will be the same for those who continue working for a business or cease employment with the business after an initial seven years of service.

Part 3 - Long Service Leave (Building and Construction Industry) Act 1981.

11. Legislation amended – pt 3.

This clause specifies that Part 3 of the Bill amends the *Long Service Leave (Building and Construction Industry) Act 1981*.

12. Removing registration from workers register, Section 62 (4) (b).

This is a consequential amendment to the change to Section 87.

13. Section 87.

This clause omits the reimbursement formula and simplifies how reimbursements to employers are determined based on what was actually paid to the employee subject to the governing board's approval.