

2009

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

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

LONG SERVICE LEAVE (PORTABLE SCHEMES) BILL 2009

GOVERNMENT AMENDMENTS

**Presented by
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Minister for Industrial Relations**

LONG SERVICE LEAVE (PORTABLE SCHEMES) BILL 2009

GOVERNMENT AMENDMENTS

Overview

Governing Board

On 25 June 2009, the Minister for Industrial Relations (the Minister) presented the Long Service Leave (Portable Schemes) Bill 2009 (the Bill) into the Legislative Assembly.

At that time, the Minister foreshadowed that the Board construct of the new amalgamated Long Service Leave Authority (the Authority) would need to be revisited at some time in the future, if any other industries were to be included within the administration of the Authority. This possibility was also raised within the context of the explanatory statement to the Bill.

As the Government is committed to a portable long service leave scheme for the community sector industry in the near future, it is timely that this Bill be amended to provide for a more flexible and accommodating Board structure, prior to the commencement of the new arrangements for the Authority on 1 January 2010.

Under the Bill, the governing board of the proposed new Authority would initially consist of a Chair, two additional independent members (one as Deputy Chair), and one member representing employers and one member representing employees from each covered industry. With current industries, that would see the inaugural board consist of seven members, however, with the inclusion of the community sector, that number would rise to nine, and with any future industry that number would increase by two each time.

As the purpose of the Board is to provide good governance and business leadership, it should be in a position to provide the best balance of equity to the membership and ensure an appropriate mix of skills and experience can be brought to the governance of the Authority. With the size of the Board not restricted, its capacity to achieve this would become progressively more complex and hindered by its numbers and the possibility of a conflict of outcomes from within the increasingly varied and diverse industries.

Under the proposed amendment, the governing board will provide a membership of up to seven members, with a construct at the discretion of the Minister, within the limits detailed in the amendment.

Scrutiny of Bills Report No.10

In Scrutiny of Bills Report No.10 released 10 August 2009, the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) (the Committee) commented generally on clause 2, dealing with commencement of the Bill, insofar as the Committee questioned whether, in this instance it is an appropriate delegation of legislative power to have the Minister fix, by written notice, the date for the commencement of the Act.

The Bill was drafted in this manner as a contingency to cover any possible delays in the Authority's readiness to implement the new provisions. Since the completion of drafting, it has been confirmed that all administrative arrangements will be ready for a 1 January 2010 launch. As such, the Government will amend the Bill to provide a commencement date of 1 January 2010.

The Committee also had two further drafting queries, these are acknowledged, with one being a numbering cross-reference. The Government Amendments correct the cross-reference.

The other comment, in respect to clause 54 of the Bill, deals with quarterly returns by contractors. Currently this clause and clause 55 (Levy payments by contractors) attract a penalty for non-compliance by contractors and are strict liability offences. The Committee questioned whether there should be a penalty in these instances. The Government acknowledges that as registration, and the requirement to lodge returns and pay levies, is voluntary for contractors, penalties should not be imposed under these clauses. The Government Amendments now reflect this.

Service credits

When the common elements applicable to both the Construction Industry and Cleaning Industry Schemes were identified and amalgamated in Part 2 of the Bill, the manner in which workers in the respective schemes accrue service was incorrectly noted as identical. The Government Amendment corrects that oversight and ensures that the methods of service accrual under the new legislation are consistent with those in the previous separate pieces of legislation.



Notes on Government Amendments

Amendment 1

This amendment omits clause 2 of the Long Service Leave (Portable Schemes) Bill 2009 (the Bill) and substitutes a new commencement clause that provides that the Act commences on 1 January 2010.

Amendment 2

This amendment omits clauses 21 (1) and (2) of the Bill, and substitutes new clauses 21 (1) and (2) that now specify that the governing board has at least 3 members and a maximum of 7 members - the Chair, at least 1 member representing employer organisations for the covered industries; at least 1 member representing employee organisations for the covered industries; and at least 1 other member who is not appointed to represent an employer or employee organisation.

New section 2A of the Bill provides that, as far as reasonably practicable, representation for the employer and employee organisation should be equal.

Amendment 3

This amendment corrects clause 43 (3) (b) of the Bill by omitting the reference to section 42 and substituting the reference to section 45.

Amendments 4 – 7

These amendments omit all references to penalties and strict liability offences in clauses 54 and 55 of the Bill.

Amendment 8

This amendment omits clause 64 of the Bill and substitutes a new clause that signposts that the service credits for a covered industry are worked out under that covered industry's particular schedule.

Amendment 9

This amendment omits clause 1.16 of Schedule 1 and substitutes a new clause 1.16 to clarify for the building and construction industry, a year is based on 220 days and workers must work at least that number of days per year to accrue a full year of service.

Amendment 10

This amendment omits clause 2.16 of Schedule 2 and substitutes a new clause 2.16 that acknowledges the substantial number of cleaners who work part-time or casual.

A cleaner's year for long service leave purposes is 365 days (based on the quarterly return periods), but they are credited with a full quarter of service regardless of the number of days actually worked during the particular quarter. The calculation of their entitlement is also based on their actual part time or casual ordinary wages. Also a cleaner cannot be credited with more than one day of service for each day worked even if they work for more than one employer for that day.

Amendment 11

This amends the dictionary to properly identify the covered industry schedules.