

LONG SERVICE LEAVE (CLEANING, BUILDING AND PROPERTY SERVICES) AMENDMENT BILL 2001

AMENDMENTS

Explanatory Memorandum

This explanatory note relates to the amendments to be introduced into the Assembly by Brendan Michael Smyth MLA, Minister for Urban Services.

Purpose of the Act

The *Long Service Leave (Cleaning, Building and Property Services) Act 1999* provides for a portable long service leave scheme for employees of the contract cleaning industry. The Act establishes a Board to administer the scheme by:

- registering eligible employers and employees;
- managing employer contributions to the scheme; and
- administering long service leave payments to employees entitled to a benefit.

Overview of the amendments

The amendments align the operation of the scheme with the nature and operation of the contract cleaning industry. The amendments address the key themes of:

- how the coverage of the Act is defined;
- the method used to measure service; and
- the method used to measure rates of pay and calculate employees' long service leave pay.

A range of other amendments dealing with registration dates, compliance, adjusting the levy, information provided and reimbursing employers are included to enable the Act to be compatible with the contract cleaning industry.

When drafting the amendments, Parliamentary Counsel modernised the language and phrasing of sections, consistent with contemporary ACT Government drafting standards.

Outline of Amendments

The amendment to Section 1 renames the Act the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

Section 3 is introduced to clarify the meaning of cleaning work and contract cleaning industry.

Section 3A is introduced to clarify the meaning of employer for the purposes of the Act.

Section 3B is introduced to clarify the meaning of employee for the purposes of the Act.

Section 3C enables the Minister to declare specific employers, employees or kinds of work, to be covered by the Act.

Section 3D is introduced to explain the meaning of 'employment period' which forms the basis of recording employees' service. Section 3D(3) specifies that when an employee is not paid ordinary wages during a quarter, the employment period is taken to have finished in the previous quarter. Section 3D(3) has particular application to casual workers and employees taking leave without pay.

Section 3D(4) specifies that days are not to be excluded from an employee's employment period when an employee:

- is incapacitated due to an injury and is entitled to workers' compensation payments which are paid by the employer; or
- is dismissed or stood down by an employer wishing to avoid long service leave obligations.

In relation to the above provision for employees entitled to workers' compensation, the amendment makes a distinction between injured employees who return to cleaning work and those who are unable to return to cleaning work.

Section 4(b) is updated to reflect amendments to section 39.

Section 7 is updated for clarity and to reflect amendments to sections 29, 36 and 39B.

Section 23 details the powers of the Board's inspector, who is responsible for confirming the accuracy of the employer and employee Registers kept by the Board. The amendments to section 23 enable the inspector to check relevant employment and wage records. Section 23(4)(b) has been redrafted.

Section 29. The register maintained by the Board shall be referred to as the 'section 29 register'.

Sections 30, 31, 32, 33, 34 and 35 govern the registration of employers.

The amendments to section 30 update the section to enable the Board to prepare an approved form rather than stipulate in the Act what information employers must provide in writing to register. Section 30 also establishes reasonable timeframes within which employers must apply to the Board.

Section 31 is amended to enable the Board to enforce the obligation of relevant employers to register with the Board.

New sections 32 and 33 set out the decisions to be made by the Registrar and the Board when assessing an employer application to register.

The new section 34 introduces an equitable method of determining a date of registration for all employers and specifies what information should be recorded to begin an employer registration.

The old section 32 has been updated and renumbered as section 35. The section deals with the issue and replacement of a certificate of registration.

The old section 33 is omitted. The section previously required employers to notify the Board of a change of address. This is no longer necessary as section 39 provides for the lodgement of quarterly returns which must include the employer's current business address.

Sections 36 to 38 provide for the registration of employees. The Board is obliged to maintain a register.

Section 36. The register will now be referred to as the 'section 36 register'.

Section 37 permits the Board to prepare approved forms rather than have the Act stipulate what must be provided by employees in writing.

Old section 36 is omitted. The old section 36 was ambiguous.

Section 37A sets out means by which applications are dealt with by the Registrar and the Board when assessing an employee application to register.

Section 38 stipulates what information must be recorded about an applicant to establish an employee registration. Section 38 also applies an equitable method of determining registration dates for all employees.

Section 38A provides for appeals against a decision of the Registrar under the new section 37A.

Sections 39 and 39A govern the quarterly levy payment made by employers to the Board. Amendments to section 39 require employers to submit a return (a form approved by the Board) every quarter. The section determines that an employer must record whether each employee was employed for the whole quarter, or note the date when any employee separated during the quarter.

Section 39A requires employers to pay the appropriate levy when submitting a return at the end of each quarter. The section gives the Board powers to enforce the payment of any amounts owed to the Board.

Section 39B has been introduced to enable the Board to recommend to the Minister a change in the rate of the levy.

Section 40 is amended to alter the penalties applied to employers who fail to pay the levy or lodge a return within an approved time-frame. Employers will be penalised \$25 for each month their payment is late and \$25 for each month their return is late. The penalties do not negate any outstanding debts owed to the Board.

The heading of section 40 is also updated to recognise that the returns are now quarterly.

Section 43 details the employee particulars that must be recorded in the section 36 register. The section now recognises that employees in the contract cleaning industry may have more than one job in the industry and therefore more than one employer.

Section 44 has been amended in accordance with section 39 and pursuant to the introduction of new section 39A.

Section 45 recognises the new methodology used in this legislation to record an employees' service in the cleaning industry. The new measure counts all days from an employee's commencement date to their day of separation: this is defined in section 3D as an employment period. Section 45 also ensures employees are not credited with more than 365 days recognised service per year.

Section 46(1). Those leaving the industry may count up to four consecutive years of absence and not lose continuity of registration. Old sections 46(3) and (4) have been omitted.

Sections 47 and 48 have been amended to update the information provided to employers and employees in the form of annual certificates issued by the Board.

Sections 50 and 51 have been amended to confirm the employment year as 365 days.

Section 54 has been amended to make it consistent with the *ACT Discrimination Act 1991*.

Section 57 introduces a new long service leave payment formula. This formula reflects the method of accruing and calculating long service leave that is consistent with the nature of the cleaning industry. The first part of the formula calculates the total amount owed to an applicant and the second part calculates the weekly rate paid to the applicant during their long service leave.

The understanding of the formula is assisted by worked examples to be found in new schedule 1.

Section 60 maintains rights of appeal to the Administrative Appeals Tribunal (AAT) regarding certain decisions. Grounds for appeal would be the Registrar or the Board

refusing to register an employer. Employees may appeal to the AAT if the Board has refused their registration.

Section 62 provides that a certificate signed by, or on behalf of the Registrar, shall be evidence of the matters stated in the certificate.

Section 64 includes a provision to repay employer contributions, to employers who use their own funds to pay their employees long service leave. The amendments to Section 64(4) and (5) specify that the amount to be repaid to the employer is the amount of contributions made by the employer for the particular employee.

Section 64 makes provision for choices and elections to be made with respect to previous long service leave legislation. Section 64(7) notes that the provisions of the section permitting election is limited to 31 December 2006.

Sections 66 and 67 have been omitted.

Section 68 has been amended to bring it into line with the current formula and to apply a measure of complete months.

Section 69 provides for transitional provisions. The provisions ensure the retrospective application of the amendments do not adversely affect:

- the registration of employers and employees;
- any payments made, or due to be made, by employers; or
- any long service leave payments already made under the Act.

Section 69 also prevents the imposition of a penalty for a breach of the amended Act that took place before the introduction of the amendments. Section 69 ensures that any acts or things done under the legislation are not retrospectively invalidated.

A dictionary has been included in the Act and can be found immediately prior to the schedules. The terms 'employment period', 'long service leave formula', 'ordinary wages', 'quarter' and 'recognised service' are defined to reflect and clarify the method of accruing and calculating long service leave that matches the nature of the contract cleaning industry.

The terms 'cleaning work', 'contract cleaning industry', 'employee' and 'employer' are defined to clarify the coverage provided by the Act.

The term 'ordinary wages' replaces the term 'ordinary pay' throughout the Act. 'Contract cleaning industry' replaces the term 'cleaning industry'; 'section 29 register' replaces references to employers' register; and 'section 36 register' replaces references to employees' register.