

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

LONG SERVICE LEAVE (PRIVATE SECTOR) BILL 2007

EXPLANATORY STATEMENT

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LONG SERVICE LEAVE (PRIVATE) BILL 2007

OUTLINE

Workers in the ACT and Commonwealth public sectors have, for many years, enjoyed the protection of long service leave benefits along with portability between different Commonwealth and Territory employers in different locations. In addition since 1981 ACT workers in the building and construction industry have enjoyed a portable long service leave scheme between the states and the ACT together with protection of the benefit in centrally managed funds. This benefit was expanded to the ACT contract cleaning industry in 1999

The purpose of this bill is to expand the scheme to cover the remainder of the private sector workforce in the Australian Capital Territory.

LONG SERVICE LEAVE (PRIVATE SECTOR) BILL 2007

PART 1 - PRELIMINARY

Sections 1 and 2 are formal requirements. Section 1 refers to the short title of the Bill and section 2 sets out the commencement arrangements.

Section 3 sets out the objects of the bill which are to ensure as far as practicable that:-

- All workers in the private sector accrue and receive long service leave benefits;
- Entitlements to long service leave are portable within the private sector; and
- Entitlements to long service leave are portable between the building and construction industry, the contact cleaning industry and the rest of the private sector; and

Section 4 establishes the dictionary as part of this Act.

Section 5 describes the standing of notes included in the Act.

Section 6 sets out the application of other legislation in relation to offences under the Act.

PART 2 – KEY CONCEPTS

Section 7 prescribes who is an employer and who is not an employer for the purposes of the Act.

Section 8 prescribes who is a worker for the purposes of the Act

Section 9 prescribes who is an employee for the purposes of the Act

Section 10 prescribes contractor for the purposes of the Act

Section 11 prescribes how the Minister may declare a person to be an employer, a contractor, an employee of an employer, a kind of work or stated activity. Any such declaration is a disallowable instrument.

Section 12 sets out the service period of a registered worker.

Section 13 prescribes the meaning of work and how work is taken to be work on the provision of a quarterly return by the employer and the payment of a levy by the employer.

Section 14 prescribes the meaning of a day and how the Minister may determine a stated period to be a day. Any such determination is a notifiable instrument.

Section 15 sets out the meaning of the registration day for workers and for employers.

PART 3 – ADMINISTRATION

Division 3.1 The authority, governing board and staff

Section 16 establishes the Private Sector Long Service Leave Authority

Section 17 prescribes the relationship between the authority and the Territory.

Section 18 sets out the functions of the authority.

Section 19 establishes powers of delegation of the authority

Section 20 establishes the governing board.

Section 21 prescribes the number of members on the board and how the Minister must appoint these members and that the registrar is a non-voting member of the board..

Section 22 prevents the appointment of a deputy chair.

Section 23 prescribes the appointment and acting requirements of the deputy registrar.

Section 24 prescribes the board's functions.

Section 25 prescribes the arrangements for use if public servants by the authority and the application of the *Public Sector management Act 1994*.

Division 3.2 Inspectors and their powers

Section 26 sets out who may appoint and who may be an inspector.

Section 27 prescribes how inspectors must be given an identity card and what must be stated on the identity card and sets the penalties which apply if the card is not returned when the person ceases to be an inspector

Section 28 prescribes the powers of an inspector to enter premises.

Section 29 prescribes the use of identity cards by inspectors.

Section 30 sets out the conditions an inspector must comply with to gain consent to enter premises and how a court should take certain matters into account in proceedings in the court.

Section 31 prescribes what an inspector may do in relation to the entry of premises.

Section 31 prescribes that persons comply with requirements of inspectors.

Section 33 sets out the requirement to provide information and documents and the related offence for failure to comply.

Division 3.3 Finances

Section 34 what is the money of the authority

Section 35 how the money of the authority must be applied.

Section 36 prescribes the appointment of an actuary, the requirement to conduct an investigation and to the report the results of the investigation to the authority with the provision of a copy of the report to the Minister.

PART 4 - REGISTRATION

Division 4.1 Application

Section 37 exempts employers in the building and construction industry and the contract cleaning industry from this part.

Division 4.2 Registration of employers

Section 38 prescribes how the authority must keep a register of registered employers.

Section 39 prescribes when an employer must apply for registration and establishes and offence for failure to do so.

Section 40 sets out how the registrar must register or refuse to register an employer.

Section 41 sets out pre-requisites for entering an employer in the register.

Section 42 sets out the contents of a certificate of registration, the duration and the replacement of certificates.

Section 43 prescribes the requirements to take effect when the details on the employer's certificate change.

Section 44 sets out the provisions for appealing against the registrar's refusal to register an employer.

Section 45 sets out the powers of a court in relation to offences against section 39 (**Application for registration by employers**) and establishes an offence for contravention of the court order.

Division 4.3 Registration of workers

Section 46 requires the authority to keep a register of registered workers

Section 47 allows a person to apply to the registrar for registration as a worker.

Section 48 sets out the conditions where an employer may apply for the registration of a worker at the end of a three month period after the person begins work and has not applied for registration.

Section 49 sets out the obligations of the registrar where a person applies for registration as a worker under section 47 or an employer applies under section 48

Section 50 sets out the obligations of the registrar in relation to decision made under section 49.

Section 51 prescribes the conditions of an appeal against the registrar's refusal to register a person as a worker under section 49 and the powers and obligations of the governing board in relation to the appeal.

Section 52 sets out the particulars required for a person to be registered as a worker.

PART 5 - QUARTERLY RETURNS AND PAYMENTS

Section 53 exempts work in the building and construction industry or the contract cleaning industry.

Section 54 prescribes the requirements of an employer in relation to quarterly returns and establishes an offence for failure to give the authority a return.

Section 55 sets out when the levy payable must be paid and establishes an offence for failure to comply.

Section 56 sets out the requirement for the determination of the levy payable by employers and the board's obligation to recommend to the Minister the levy that should be payable.

Section 57 prescribes the payment and its remission where an employer fails to give a quarterly return and sets out the court's additional powers.

Section 58 provides for the exemption of working directors from the payment of a levy and for the ending of the exemption.

Section 59 sets out the requirements for registered contractors to give the authority a quarterly return and establishes an offence for failure to do so.

Section 60 sets out the requirements for registered contractors to pay the levy and establishes a penalty for failure to do so.

Section 61 sets out the requirement for the determination of the levy payable by contractors and the board's obligation to recommend to the Minister the levy that should be payable.

Section 62 prescribes the detail which must be included in records kept by employers and the penalties which apply for failure to do so.

Section 63 prescribes the detail which must be included in records kept by contractors and the penalties which apply for failure to do so.

PART 6 - ENTRIES IN WORKERS REGISTER

Section 64 exempts an employer in relation to the employment of an employee in the building and construction industry or the contract cleaning industry from this part.

Section 65 prescribes the particulars to be entered in the workers register.

Section 66 prescribes how the board may fix a different remuneration for an employee than the total ordinary remuneration stated in a quarterly return and the conditions the board must comply with before fixing an amount.

Section 67 sets out the conditions the governing board must comply with in relation to a review of ordinary remuneration under section 66(5).

Section 68 sets out the governing board's obligations where it fixes an amount of ordinary remuneration under section 66(5)(v)

Section 69 prescribes time frame for payment of a levy set by the governing board and establishes an offence for failure to do so.

Section 70 prescribes the credit in the workers register for the worker on or after the worker's registration day.

Section 71 sets out the requirements for the removal of a person from the workers register.

Section 72 prescribes how the governing board must direct the registrar to re-register a person

PART 7 - ANNUAL CERTIFICATES

Section 73 sets out how the registrar must give each registered worker a certificate between the 31st July and the 1st of November and prescribes which information must be stated in the certificate.

Section 74 prescribes how the registrar must give each registered employer a certificate between the 31st July and the 1st of November and prescribes which information must be stated in the certificate.

Section 75 sets out how an objection about the accuracy of a matter stated in the certificate may be lodged with the governing board and how the board must decide whether or not to make a correction to the workers register and must supply an amended annual certificate if the register is amended.

PART 8 – LONG SERVICE LEAVE AND PAYMENTS

Section 76 describes when a year of service is completed by a registered worker.

Section 77 sets the long service leave formula and defines the components of the formula.

Section 78 prescribes how a worker is entitled to long service leave after 10 years service with a registered employer.

Section 79 sets out the conditions that employers must comply with when granting long service leave and creates offences for failing to comply with the conditions.

Section 80 prescribes who may apply for leave and what the authority must do once the governing board is satisfied that the applicant is entitled to long service leave.

Section 81 prescribes how the entitlement to payment instead of leave is worked out and what the governing board must do if it is satisfied that this section applies to the worker.

Section 82 prescribes how a worker may apply for payment instead of leave and the need for a doctor's certificate where the employee is totally incapacitated for employment.

Section 83 prescribes that the governing board may require an applicant to submit for a medical examination, who will conduct the medical examination and the payment of fees and charges for a person who has applied for payment instead of long service leave under section 82.

Section 84 prescribes what the governing board must do when satisfied that an applicant is entitled to payment instead of long service leave and what the governing board may do if an applicant fails to comply with the requirements under section 82(2).

Section 85 prescribes how leave payments are worked out for a registered worker for or instead of long service leave.

Section 86 prescribes how leave payments are worked out for registered employees

Section 87 prescribes how leave payments are worked out for registered contractors.

Section 88 prescribes what the authority must do in relation to records of payments and service.

Section 89 prescribes how public holidays do not count as long service leave during long service leave.

PART 9 – RECOGNISED SERVICE UNDER THE BUILDING AND CONSTRUCTION INDUSTRY ACT

Section 90 sets out the definitions for this part.

Section 91 prescribes how recognised service under the Building and Construction Industry Act and the Contract Cleaning Industry Act are worked out.

PART 10 – MISCELLANEOUS

Division 10.1 Review of decisions

Section 92 prescribes the meaning of a reviewable decision.

Section 93 prescribes what the governing board and/or the registrar must do when a reviewable decision is made.

Section 94 prescribes how a person may apply for a review of a reviewable decision.

Division 10.2 General

Section 95 prescribes how the Minister may declare a law to be a corresponding law.

Section 96 prescribes how a registered employee must elect whether to take the benefits under this Act or the *Long Service Leave Act 1976* and what the governing board must do.

Section 97 prescribes what is evidence if stated in an evidentiary certificate.

Section 98 describes how forms for this Act are approved and used and that an approved form is a notifiable instrument

Section 99 prescribes the Executive's regulation-making powers.

Section 100 this section amends the Legislation listed in Schedule 2.

SCHEDULE 1 – REVIEW OF DECISIONS

Part 1.1 Governing Board's decisions

This part of the schedule sets out the Act provision, reviewable decision and persons to be notified in relation to the governing board's decisions.

Part 1.2 Registrar's decisions

This part of the schedule sets out the Act provision, reviewable decision and persons to be notified in relation to the registrar's decisions.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Part 2.1 Financial Management Act 1996

This part of the schedule inserts a reference to the Private Sector Long Service Leave Authority into the *Financial Management Act 1996*

Part 2.3 Long Service Leave Act 1976

This part of the schedule lists the amendments to the *Long Service Leave Act 1976*

Part 2.3 Long Service Leave Act (Building and Construction Industry) Act 1981

This part of the schedule lists the amendments to the *Long Service Leave (Building and Construction Industry) Act 1981*.

Part 2.4 Long Service Leave Act (Contract Cleaning Industry) Act 1999

This part of the schedule lists the amendments to the *Long Service Leave (Contract Cleaning Industry) Act 1999*.