

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

LONG SERVICE LEAVE (PRIVATE SECTOR) BILL 2003

EXPLANATORY STATEMENT

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LONG SERVICE LEAVE (PRIVATE) BILL 2003

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 2003

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 and the rest of the private sector; and

Section 4 establishes the dictionary.

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 and who is not a worker for the purposes of the Act

Section 9 prescribes who is a contractor for the purposes of the Act

Section 10 prescribes how the Minister may declare a person to be an employer or an employer of a particular person or to be a worker or a worker for a particular employer. Any such declaration is a disallowable instrument.

Section 11 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 12 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.

PART 3 – ADMINISTRATION

Division 3.1 The board

Subdivision 3.1.1 Establishment and functions etc

Section 13 establishes the Private Sector Long Service Leave Board as a corporation with a common seal.

Section 14 establishes the independence of the board from the Territory.

Section 15 sets the functions of the board.

Section 16 prescribes the number of members on the board and how the Minister must appoint these members.

Section 17 prescribes how the Minister must appoint the chairperson of the board and how the deputy chairperson is to be elected by the members of the board

Section 18 prescribes a term of appointment not longer than five years.

Section 19 refers to the conditions of appointment for members of the board as those decided by the Minister if they are not provided for in the Act or another Territory law.

Section 20 prescribes how the Minister may end the appointment of a member of the board for misbehaviour or physical or mental incapacity. The section also requires the Minister to terminate an appointment under certain circumstances such as: -

- The member no longer represent those they were appointed to represent;
- Bankruptcy;
- Conviction of an offence punishable by imprisonment for one year or longer;
- Absence for three consecutive meetings of the board without leave approved by the Minister; or
- Failure to disclose an interest.

Section 21 grants the board power to delegate any of its powers to a public servant.

Subdivision 3.1.2 Proceedings of the board

Section 22 describes how the board determines the times and places of its meetings with the requirements that –

- It must meet at least four times a year;
- The chairperson may at anytime call a meeting of the board;
- The chairperson must call a meeting if asked by the Minister or by at least three members of the board.

It also allows the calling of a meeting by the deputy chairperson in the absence of the chairperson.

Section 23 sets out the procedures governing proceedings of the board including the requirement to keep minutes of its meetings.

Section 24 deals with the disclosure of interest by members of the board which apply if the member has a direct or indirect financial interest in an issue to be considered by the board or an interest which could conflict with a proper exercise of the member's functions as a board member.

Section 25 provides protection from civil liability to board members for an act or omission done honestly and without negligence.

Section 26 prescribes how the board may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control and how the *Public Sector Management Act 1994* is to apply to management by the board of public servants.

Subdivision 3.1.3 Finances

Section 27 describes how the money of the board consists of money received from levy payments, income derived from the investment of the board's money, money borrowed by the board and any other money paid to the board under an Act.

Section 28 describes how the board must apply money in accordance with its obligations under the Act.

Section 29 describes how the board may borrow money including the requirement that the terms be approved by the Minister and how the board may give security over the whole or part of its assets for repayment of the money borrowed and the payment of interest on that money.

Section 30 requires the board to seek Ministerial approval before entering into a contract for the payment or receipt of an amount of money greater than \$250,000. Investments made in accordance with section 52 of the *Financial Management Act 1996* are exempt from this requirement.

Section 31 prescribes the appointment of an actuary and how the actuary must: -

- Conduct an investigation of the state and sufficiency of the money of the board;
- Report the result of the investigation to the board; and
- Give the Minister a copy of the report made.

Section 32 prescribes the application of the *Financial Management Act 1996* Part 8 to the board.

Subdivision 3.1.4 Advisory committees

Section 33 allows the board to establish an advisory committee and requires the board to do so if requested by the Minister. An advisory committee may determine how it is to exercise its functions subject to any direction from the board.

Division 3.2 The registrar, deputy registrar and inspectors

Section 34 prescribes the establishment of the position of registrar and deputy registrar and that they must be public servants.

Section 35 prescribes the functions of the registrar and deputy registrar.

Section 36 prescribes how the chief executive may appoint a person to be an inspector for the purposes of the Act and sets out qualifications for a person to be an inspector.

Section 37 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 38 prescribes how an identity card must be shown before an inspector exercises his or her powers in relation to a person and how an inspector may not remain in premises if the inspector does not show his or her identity card when asked by the principal.

Section 39 prescribes the powers of an inspector to enter premises.

Section 40 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 41 prescribes an inspector's powers once premises are entered.

PART 4 - REGISTRATION

Division 4.1 Application

Section 42 exempts employers in the building and construction industry from this part.

Division 4.2 Registration of employers

Section 43 prescribes how the board must keep a register of registered employers.

Section 44 sets an offence of 50 penalty units if an eligible person fails to seek registration as an employer within one month or additional time as set by the registrar.

Section 45 requires the registrar to register a person if satisfied that person is an employer however, if the registrar is not satisfied that the person is an employer, the registrar must refuse to register the person.

Section 46 sets out the powers of a court in relation to offences against section 44 (**Application for registration by employers**), sets a penalty for a person who

contravenes an order of the court and the effect of an order filed in a court having civil jurisdiction.

Section 47 prescribes how the registrar must add the particulars about the employer on the employers' register.

Section 48 requires the registrar to provide a certificate of registration to an employer and prescribes steps to replace lost or stolen certificates. It also prescribes that a certificate of registration is evidence of matters contained in the certificate.

Section 49 requires employers to notify the registrar of changes in details. It sets out which details must be notified, a time within which notification must take place and sets penalties for failure to comply. It also requires the board to provide a new certificate when amendments are made.

Section 50 prescribes that the register is publicly accessible, it may be inspected without charge and a person may obtain a copy of all or part of the register on payment of reasonable copying costs.

Division 4.3 Registration of workers

Section 51 describes how the board must keep a register of registered workers.

Section 52 prescribes that a person may apply for registration as a worker and how the registrar must register a worker or, if not satisfied that the person is a worker, must refuse to register the worker.

Section 53 prescribes how the registrar registers a person as a worker including which details are to be entered in the register.

Section 54 requires the registrar to provide a certificate of registration to a worker and prescribes steps to replace lost or stolen certificates. It also prescribes that a certificate of registration is evidence of matters contained in the certificate.

Section 55 prescribes that the register is publicly accessible, it may be inspected without charge and a person may obtain a copy of all or part of the register on payment of reasonable copying costs.

PART 5 - QUARTERLY RETURNS AND PAYMENTS

Section 56 gives a definition of a quarterly return.

Section 57 exempts work in the building and construction industry from this part.

Section 58 sets out how quarterly returns must be given to the board by a registered employer, that the report must be in writing and prescribes which particulars must be included in the return. Failure to comply incurs a penalty.

Section 59 sets out how quarterly returns must be given to the board by a registered contractor, that the report must be in writing and prescribes which particulars must be included in the return. Failure to comply incurs a penalty.

Section 60 prescribes how a person must pay a levy to the board and sets a penalty for failure to comply. The amount of levy payable is determined in section 62.

Section 61 prescribes how the board may recommend to the Minister the amount of the levy that should be payable by registered employers and how the Minister must have regard to the board's recommendation. The Minister may also have regard to the total amount paid on behalf of the Construction Industry Long Service Leave Board for the previous quarter.

Section 62 provides for the Minister to set, in writing, the levy for a registered employer or contractor. The levy is expressed as a percentage of the total ordinary remuneration paid or payable to employees other than apprentices. The determination is a disallowable instrument.

Section 63 sets out how a person who fails to make a return to the board under section 58 or 59 must pay a penalty. A further penalty is set for failure to pay the levy required under section 60. The registrar may remit all or part of an amount payable. This section also sets out how a court may deal with the matter.

Section 64 sets out the conditions for exemption from payment of a levy by working directors.

Section 65 prescribes the detail which must be included in records kept by employers and the penalties which apply for failure to do so.

PART 6 - ENTRIES IN WORKERS REGISTER

Section 66 exempts an employer in relation to the employment of an employee in the building and construction industry from this part.

Section 67 prescribes the particulars to be entered in the workers register.

Section 68 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 69 fixes a service credit to be entered in the workers register for a day's work provided payment has been made for the period of service.

Section 70 fixes service credit conditions in special circumstances.

Section 71 sets out the conditions the board must comply with before removing a worker's name from the workers register, how entitlements are preserved and how the

ending of a worker's registration does not prevent a worker from becoming registered again.

PART 7 - ANNUAL CERTIFICATES

Section 72 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 73 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 74 sets out how an objection about the accuracy of a matter stated in the certificate may be lodged with the 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

Division 8.1 General

Section 75 defines award holiday and registered worker.

Section 76 sets the long service leave formula and defines the components of the formula.

Section 77 exempts recognised service in the building and construction industry from this part.

Section 78 describes recognised service.

Section 79 prescribes how a worker is entitled to long service leave after 10 years service with a registered employer.

Section 80 prescribes how a registered worker's amount of leave is worked out in accordance with the long service leave formula and how additional days of long service leave for additional days of recognised service are worked out.

Section 81 sets out the conditions that employers must comply with on granting long service leave.

Section 82 prescribes how a registered employee may apply to the board for payment for long service leave – how an application must be made and how the board must pay an applicant once satisfied that the applicant is entitled to long service leave.

Section 83 sets out the amount an employee will be paid for long service leave in accordance with two options - whichever yields the greater amount.

Section 84 prescribes how the entitlement to payment instead of leave is worked out and how an application is made for a contractor who has ceased work under prescribed conditions

Section 85 prescribes how the entitlement to payment is worked out and how an application is made for an employees who has ceased work under prescribed conditions

Section 86 describes the effect of a public holiday falling during a period of long service leave – it extends the leave.

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

Section 87 defines the Building and Construction Industry Act, eligible employee and long service leave benefit as they relate to this part.

Section 88 prescribes how an eligible worker's entitlement is worked out under the Act using recognised service under the *Long Service Leave (Building and Construction Industry) Act 1981* and how a worker is not entitled to a long service leave benefit under that Act if benefit is or has been provided in relation to that service.

PART 10 – MISCELLANEOUS

Division 10.1 Review of decisions

Section 89 defines reviewable decision.

Section 90 prescribes what the board must do if it makes a reviewable decision and what the registrar must do if he or she makes a reviewable decision and the requirements for a notice.

Section 91 provides that a reviewable decision may be reviewed by the administrative appeals tribunal following a written application.

Division 10.2 General

Section 92 prescribes that an employee who is eligible to take benefits under both this Act and the *Long Service Leave Act 1976* must elect under which Act they are to take long service leave and how the employee must notify the board of the nature of the employee's election. It also sets out how the board must act and how a registered employer may apply for reimbursement.

Section 93 prescribes what is evidence if stated in an evidentiary certificate.

Section 94 describes how forms for this Act are approved and used and that an approved form is a notifiable instrument

Section 95 prescribes the Executive's regulation-making powers.

**PART 11 – REPEAL OF LONG SERVICE LEAVE (CONTRACT CLEANING
INDUSTRY) ACT 1999**
Division 11.1 General

Section 96 defines the commencement day and the Act to be repealed in this part.

Division 11.2 Transitional and saving provisions

Section 97 defines eligible employee for this division.

Section 98 prescribes how an eligible worker's entitlement is worked out under the Act using recognised service under the *Long Service Leave (Contract Cleaning Industry) Act 1999* and how a worker is not entitled to a long service leave benefit under that Act if benefit is or has been provided in relation to that service.

Section 99 allows automatic transfer of the registers from the repealed Act to this Act on commencement day.

Division 11.3 Assets and liabilities of former board

Section 100 defines the former and new board for this division.

Section 101 details how the assets and liabilities of the former board are vested in the new board.

Section 102 prescribes how the chief executive may certify that an asset or liability has been vested in the new board and how a certificate is evidence of the matters it states.

Section 103 prescribes the preconditions for application of the section, what the registering authority must do and the evidentiary value of the register mentioned in this section. It also defines *registering authority* and *registrable asset*.

Section 104 prescribes how proceedings and evidence apply to the former board and the new board and defines *proceeding*.

Division 11.4 Other provisions

Section 105 prescribes a regulation-making power for the Executive to modify the operation of this part where a matter is not adequately dealt with in this part.

Section 106 sets a two year expiry date on this part.

PART 12 – REPEAL AND CONSEQUENTIAL AMENDMENTS

Section 107 repeals the *Long Service Leave (Contract Cleaning Industry Act) 1999*

Section 108 this section amends the Acts listed in Schedule 2.

SCHEDULE 1 – REVIEW OF DECISIONS

Part 1.1 Board’s decisions

This part of the schedule sets out the Act provision, reviewable decision and persons to be notified in relation to the 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 Long Service Leave Act 1976

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

Part 2.2 Long Service Leave Act (Building and Construction Industry) Act 1981

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