

Contract Cleaning Industry (Long Service Leave) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Clause 3 sets out the relevant definitions for the purposes of the Act.

PART 2—THE BOARD

Clause 4 establishes the Contract Cleaning Industry Long Service Leave Board and provides that—

- (a) it shall be a legal person;
- (b) it shall consist of five members being:
 - (i) a chairperson;
 - (ii) representative from employees in the contract cleaning industry;
 - (iii) representative from employers in the contract cleaning industry;
 - (iv) a person having investment experience;
 - (v) a person who is an actuary;
- (c) the members hold office for the term not exceeding 5 years and on conditions the Governor in Council determines and the Governor in Council may remove from office any member;
- (d) a member is to be paid fees, allowances and expenses as are fixed by the Governor in Council.

Clause 5 provides for the appointment of Deputy members in respect of the employer and employee members.

Clause 6 provides for the convening of meetings of the Board and generally for the conduct of the proceedings of Board meetings.

Clause 7 provides for the appointment of a Director, inspectors and officers and employees of the Board and that the Director shall be the Chief Executive Officer of the Board.

Clause 8 provides that the Board is to present an annual report to the Minister at the end of each financial year.

Clause 9 provides that the Board may delegate one or more of its powers to a member or “officer” of the Board.

PART 3—THE FUND

Clause 10 establishes the Contract Cleaning Industry Long Service Leave Fund and provides—

- (a) that the Fund is to be administered by the Board;
- (b) for payments to be made into the Fund comprising;

- (i) the long service leave charges paid under the Act;
- (ii) proceeds from investments of the Fund;
- (iii) penalties recovered under the Act;
- (iv) any other money authorized by the Act;
- (c) for the payments to be made out of the Fund comprising—
 - (i) long service leave benefits;
 - (ii) expenses incurred in administering the Act;
 - (iii) any other money authorized by the Act;
 - (iv) money lent to the Board from the Consolidated Fund;
 - (v) superannuation for employees of the Board;
- (d) that the initial funding of the scheme is to be by way of a loan from the Consolidated Fund which is to be repaid by installments, agreed to between the Treasurer and the Minister, by 30 June 1988.

Clause 11:

- (a) *Sub-clause (1)* provides that the Board may invest the Fund as set out in section 4 of the *Trustee Act* 1958 or by way of a first mortgage of an estate in fee simple or of a leasehold interest.
- (b) *Sub-clause (2)* provides that the Construction Industry Long Service Leave Board may act as an agent for the Contract Cleaning Industry Long Service Leave Board in respect of the investment of money in the fund.

Clause 12 provides that the Board may with the consent of the Minister, after consultation with the Treasurer, enter into joint ventures.

Clause 13 provides that in a joint venture a member or a nominee of the Board may be a director of a Company.

Clause 14 provides that the Board may, with the consent of the Minister acquire and manage land and sets out the parameters of its investment ability.

Clause 15 provides for the banking arrangements of the Board.

Clause 16 obliges the Board to—

- (a) keep proper accounts and records of its transactions and affairs (including the administration of the Fund);
- (b) forward a statement of its accounts to the Treasurer each financial year;
- (c) ensure that the statement of accounts is audited by the Auditor-General.

Clause 17 provides that actuarial investigations must be conducted on the state of sufficiency of the Fund at intervals determined by the Board. At least one investigation must be made every three years.

The section further provides what the actuary must report on; that is, whether a reduction or increase in the contribution rate is required.

Clause 18 provides that Board may borrow up to \$1 million by way of overdraft for the purpose of obtaining temporary financial accommodation.

PART 4—REGISTERS

Clause 19 provides that the Board must keep a register of employers and further provides that—

- (a) the Board must enter the name of each employer who applies;
- (b) the Board may remove the name of each employer who stops being an employer and who has applied;
- (c) a penalty of 10 penalty units for failing to register.

Clause 20 provides that the Board must keep a register of working sub-contractors and must enter the name of each who applies.

It further provides that—

- (a) the Board may remove the name of any working sub-contractor who ceases to be such and who has applied;
- (b) a penalty of 10 penalty units for failing to register.

Clause 21 provides that the Board must keep a register of workers and must enter the name of each worker who applies.

PART 5—CONTRIBUTIONS

Clause 22 provides—

- (a) that every employer who employs persons to work in the contract cleaning industry shall pay to the Board a long service leave charge in respect of the period from appointed day until the month determined by the Board to be the beginning of the employers first quarter;
- (b) that every employer must in respect of every worker employed during a quarter in the contract cleaning industry from the day which is the first day of the month of the beginning of the quarter pay to the Board the long service leave charge;
- (c) that every working sub-contractor who has not made an election not to take part in the scheme, must pay to the Board every quarter the long service leave charge;
- (d) that the long service leave charge must be paid by the employer and the working sub-contractor who elects to contribute within 14 days after the end of the first quarter;
- (e) that the long service leave charge must be paid by the employer and the working sub-contractor who elects to contribute within 14 days after the end of every quarter;
- (f) what constitutes a quarter;
- (g) that the Board may change the commencement of any quarter;
- (h) that an employer is not required to pay the long service leave charge for a worker who does not work 4 hours or more in a week;
- (i) that if an employer engages a working sub-contractor who is not registered under *Clause 20* the employer must pay the long service leave charges to the Board in respect of that person based on the total amount paid to that person during the quarter;

Clause 23 provides that the long service leave charge is to be determined in accordance with Schedule One.

Clause 24 provides that a working sub-contractor may elect not to contribute to the scheme and that Parts 5 and 6 of the Act are not to apply if that election has been made.

Clause 25 provides that an employer who employs workers in Victoria and in the same industry in another State or Territory may pay the long service leave charge in respect of those workers (who are registered) in respect of the work done in the other State or Territory.

It further provides the same facility to working sub-contractors who have worked in the same industry in any State or Territory to have the option of paying the long service leave charge in respect of that work.

The Board will have the power to refuse the payment.

Clause 26 provides—

- (a) in sub-clauses (1) and (2), for employers and working sub-contractors may seek the option of paying the long service leave charge where work has been done outside Australia. The Board will have the power to grant or reject the application;
- (b) in sub-clause (3), the Board may determine whether an industry outside Australia is the same as the contract cleaning industry;
- (c) in sub-clause (4), for the calculation of the amount of the long service leave charge;
- (d) in sub-clause (5), that the Board may increase the amount of the long service leave charge from time to time in respect of workers employed outside Australia;
- (e) in sub-clause (6), what considerations are to apply in the Board making a determination under sub-clause (5);

Clause 27 provides that an employer who—

- (a) is domiciled in another State or Territory and who employs workers in the contract cleaning industry in Victoria; or
- (b) is domiciled in Victoria and employs workers in both Victoria and in another State or Territory—

may apply to the Board for an exemption to pay the long service leave charge in respect of the workers in Victoria.

It further provides that the Board may grant the application if it is satisfied that a like scheme in the other State or Territory exists. The Board may at its discretion revoke any exemption given.

Clause 28 provides that the Board may estimate and make an assessment of the long service leave charges that are due from an employer or working sub-contractor if there is not enough information available to the Board to enable it to calculate the charge in accordance with Part 5, or where it appears that the employer or working sub-contractor is liable to pay long service leave charges and they have not been paid.

The clause also provides—

- (a) for the nature of the material which the Board may use to estimate or assess the long service leave charges due;
- (b) for the service of assessment notices on employers or working sub-contractors;
- (c) for employers and working sub-contractors to lodge an objection against an assessment;

- (d) for the Board to consider any objection and make a decision after informing itself in any way it thinks fit;
- (e) for the Board to certify its assessment after 28 days of the notice of assessment being issued;
- (f) that unless an appeal is lodged under Clause 29, the long service leave charges as assessed are due and recoverable by the Board;
- (g) that the certified assessment must be notified to the employer or working sub-contractor concerned.

Clause 29 provides that a person to whom a certified assessment applies may appeal to the Industrial Relations Commission in Court Session within 14 days of the date of the notice of the assessment.

The clause also provides—

- (a) that the Industrial Relations Commission in Court Session may hear and determine the matter;
- (b) that in the hearing, if evidence is produced which was not available to the Board at the time of making its assessment the Commission may upon application by the Board, return the matter to the Board for further assessment;
- (c) that the Commission, in hearing the matter, may determine the amount of long service leave charges to be paid and any penalty interest calculated in accordance with the Act and costs and make an Order to that effect as if made by a Magistrate Court;
- (d) that such Orders are enforceable through the Melbourne Magistrates' Court and are deemed an Order requiring the payment of money and are enforceable through the Magistrates' Court system as such.

PART 6—ENTITLEMENTS AND PAYMENTS

Division 1—Entitlements

Clause 30 provides that every worker and every working sub-contractor who has not made an election not to make long service leave contributions, is entitled to long service leave on “ordinary pay” in respect of continuous service in the contract cleaning industry.

It further provides that the entitlement to long service leave in the contract cleaning industry is deemed to have started on the specified day and that the entitlement shall be as set out in Schedule One.

Clause 31 sets out the entitlements of a worker to long service leave where service in the contract cleaning industry is terminated before leave is taken and when and how that entitlement is to be paid.

Clause 32 provides for the determination of the entitlement in respect of service before 1 January, 1965.

Clause 33 enables the entitlements of a worker or working sub-contractor upon death to be paid to that person's personal representative.

Division 2—Matters which Relate to the Determination of Entitlements

Clause 34 provides—

- (a) in sub-clause (1), for what constitutes “ordinary pay” for a worker who has either worked full-time or part-time;

- (b) in sub-clause (2), “for a definition of ordinary pay” of a working sub-contractor;
- (c) sub-clause (3) “ordinary pay” for a worker who is employed in industry in Victoria and in the contract cleaning industry in a place outside Australia.

Clause 35 provides that the Board may determine “ordinary pay” of a worker as excessive where an entitlement accrues. The clause also provides—

- (a) for the Board to issue a notice of determination to that effect stating the grounds for the determination;
- (b) for the worker (or a personal representative) to make a written submission about the Board’s proposed determination which the Board may have regard to before confirming determination;
- (c) for an appeal against a determination to the Industrial Relations Commission in Court Session which may hear and determine the matter.

Clause 36 provides that the Board may determine “ordinary pay” where it considers the ordinary pay of a worker is not enough, where an entitlement accrues.

Clause 37 sets out what constitutes continuous service in the contract cleaning industry in respect of a worker.

Clause 38 sets out what constitutes continuous service in the contract cleaning industry in respect of a working sub-contractor.

Clause 39 sets out the matters which determine the entitlements of a worker in relation to—

- (a) what constitutes continuous service;
- (b) a worker who has not registered with the Board; and
- (c) a worker who does not advise the Board of previous service in the contract cleaning industry;

Clause 40 sets out the matters which determine the entitlements of a working sub-contractor in relation to—

- (a) what constitutes continuous service;
- (b) any period of service where the working sub-contractor has not made the required contributions.

Clause 41 provides for the determination of the date on which a worker’s services were terminated in the contract cleaning industry.

Division 3—Taking of Long Service Leave

Clause 42 provides—

- (a) in sub-clause (1), that long service leave must be granted by an employer as soon as practicable after the entitlement arises but having regard to the employers needs;
- (b) in sub-clause (2), that the leave may be postponed to an agreed date or, if no agreement, as determined by the Board which must be at least six months after the determination;
- (c) in sub-clause (3), how the leave is to be taken;
- (d) in sub-clause (4), how the ordinary pay is to be paid during the leave;

- (e) in sub-clause (5), and (6), for ordinary pay increases to be paid to the worker upon the worker's return to work only if the worker has applied;
- (f) in sub-clause (7), that the leave is inclusive of any public holiday but exclusive of annual leave.

Clause 43 provides that a worker may take leave after 10 years continuous service in advance of the entitlement accruing, how much leave is to be available and that where such leave is taken no further leave or pay in lieu may be taken or granted for the period in respect of which the leave was taken.

Clause 44 provides that a working sub-contractor may take leave after 10 years continuous service in advance of the entitlement accruing, how much leave is to be available and that where such leave is taken no further leave or pay in lieu may be taken or granted for the period in respect of which the leave was taken.

Division 3—Payments

Clause 45 provides—

- (a) in sub-clause (1), that payment for long service leave shall not be made for any entitlement which accrued before the appointed day;
- (b) in sub-clause (2), that an employer shall not be reimbursed from the Fund in respect of any payment for long service leave in advance which was made before the appointed day;
- (c) in sub-clause (3), that if a worker has completed 15 years continuous service in the contract cleaning industry and the entitlement accrued before the appointed day and no employer is liable to make a payment in respect of that leave, the payment may be made from the Fund.

Clause 46 provides that a payment in respect of long service leave must be made from the Fund.

It further provides—

- (a) that an employer may be reimbursed from the Fund for any payment in respect of long service leave which should have been made from the Fund and how that reimbursement is to be calculated;
- (b) that the Board is not required to make a reimbursement unless the application is received within 7 years of the making of the payment.

PART 7—INSPECTIONS

Clause 47 provides for the appointment and identification of inspectors.

Clause 48 sets out the powers that inspectors are to have in enforcing the Act.

Clause 49 provides that occupiers of premises and employers are to assist inspectors.

Clause 50 sets down the various offences against inspectors.

Clause 51 establishes an offence for dismissing a worker who has given information to an inspector.

PART 8—ENFORCEMENT AND LEGAL PROCEEDINGS

Clause 52 provides the Board with the power to require an employer it has reason to believe may leave Australia before the long service leave charge is due to be paid, to require payment of that charge.

Clause 53 provides for the recovery of long service leave charges due to the Board. In particular it provides—

- (a) that the charges are a debt due to the Crown;
- (b) that unpaid long service leave charges may be sued for and recovered as a civil debt through a Magistrates' Court or any other Court of competent jurisdiction by or on behalf of the Board by any person authorized by it;
- (c) the proofs, evidence and process of recovery of those charges;
- (d) the penalties that apply when long service leave charges are not paid on time;
- (e) for the recovery of long service charges from associated corporations.

Clause 54 sets out the service procedure for documents in proceedings for the recovery of long service leave charges.

Clause 55 imposes various obligations on liquidators of companies and trustees in bankruptcy where money owed to the Board.

Clause 56 imposes various obligations on an agent acting for an absentee principal winding up a business which owes money to the Board.

Clause 57 provides that the recovery of long service leave charges may be undertaken whether or not the charges have been paid in the person's lifetime.

Clause 58 imposes obligations on executors or administrators where the estate of a deceased employer owes money to the Board.

Clause 59 provides that persons who are joint employers, are individually liable for the payment of long service leave charges or surcharges in respect of a worker employed by them.

Clause 60 provides that payment of penalties does not relieve any person's liability to pay long service leave charges or surcharges.

Division 2—Offences and Procedures

Clause 61 provides that any information for an offence against the Act may be laid by an inspector or other officer of the Board so authorized.

Clause 62 provides that offences against the Act shall be brought in a Magistrates' Court or the Metropolitan Industrial Court.

Clause 63 sets out particular offences against the Act.

Clause 64 sets down the general penalty for offences against the Act.

Clause 65 provides that any information for an offence against the Act must be laid within 5 years after the offence was committed.

Clause 66 sets down the proofs and defences applying to prosecution proceedings.

Clause 67 provides for the prosecution of firms and corporations, including directors and officers of corporations.

Clause 68 provides that appeals against convictions are to lie to the Industrial Relations Commission in Court Session.

Clause 69 provides for the Board to make a decision that any specified work is or is not work in the Contract Cleaning Industry.

It also provides:

- (a) that the Board may make a decision of its own motion or an application by a person or a person acting on behalf of another person;
- (b) that the Board may make its decision applicable to a particular group of workers or working sub-contractors;
- (c) how the Board is to consider an application;
- (d) constraints on how Board decisions apply in relation to when the work was first considered to be performed;
- (e) that where the Board decides on a matter of work, long service charges become due and payable;
- (f) that the Board is to make known its decision on one or all of various ways;
- (g) for a right of appeal by an applicant or another person affected by the decision to the Industrial Relations Commission in Court Session.

Clause 70 that if a dispute arises about the entitlement to long service leave or pay in lieu or “ordinary pay” the matter shall be heard by the Industrial Relations Commission in Court Session.

Clause 71 sets out the jurisdiction and proceedings of the Industrial Relations Commission in Court Session in dealing with matters arising out of the Act.

Clause 72 sets out evidentiary matters in relation to legal proceedings taken by or against the Board.

Clause 73 requires employers to keep the books and records as are prescribed.

Clause 74 provides that a contract entered into, either before or after the section commences, does not annul, vary or exclude any of the provisions of the Act.

Clause 75 provides—

- (a) in sub-clause (1) that pay in lieu of long service leave must not be made unless authorized by the Act;
- (b) that a worker or working sub-contractor who is on long service leave or pay in lieu of long service leave must not work in the contract cleaning industry during that leave or for the period for which pay in lieu was granted;
- (c) that a person must not knowingly employ a worker or engage working sub-contractor who is on long service leave in the industry;

Clause 76 provides for refunds to persons who overpaid long service leave charges.

Clause 77 provides for the service of notices under the Act.

Clause 78 provides that the Board may by notice require a person to give all that information which will enable it to ascertain that person’s liability or entitlement under the Act.

It also specifies the person’s obligations when issued with a notice.

PART 10—ORDERS IN COUNCIL AND REGULATIONS

Clause 79 provides the Governor in Council with the ability to make an Order declaring the date on and from which benefits begin to accrue under the Act. The Order may specify a date before the making of the Order.

Clause 80 sets out the regulation making powers.

SCHEDULES

SCHEDULE ONE

Paragraph 1 sets out method of calculating the long service leave charges payable under the Act. They are as follows:

For workers

- (a) the fixed percentage of the minimum award wage; or
- (b) the fixed percentage of the actual pay—whichever is the greater;'
- (c) For working sub-contractors;

the fixed percentage of the hourly rate determined by the Board one month after the appointed day and thereafter on 1 January each year as the hourly rate applicable to working sub-contractors.

Paragraph 2 sets out what constitutes “ordinary pay” for the purposes of calculating the long service leave charges.

SCHEDULE TWO

Sets out the entitlements to long service leave for workers and working sub-contractors;

They are—

- (a) 13 weeks after 15 years at ordinary pay plus $4\frac{1}{3}$ weeks for each five years additional service;
- (b) if more than 15 years service and service is terminated $\frac{1}{60}$ of the period of continuous service since the last accrual of entitlement;
- (c) if between 10 but less than 15 years and service is terminated— $\frac{1}{60}$ of the period of continuous service.