

AUSTRALIAN CAPITAL TERRITORY

LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY)  
ORDINANCE 1981

No. 23 of 1981

LONG SERVICE LEAVE (AMENDMENT) ORDINANCE 1981

NO. 24 OF 1981

EXPLANATORY STATEMENT

The Long Service Leave (Building and Construction Industry) Ordinance 1981 and the Long Service Leave (Amendment) Ordinance 1981 introduce a long service leave scheme into the A.C.T. which confers benefits upon employees and contractors engaged in the building and construction industry in the Territory.

A. Long Service Leave (Building and Construction Industry)  
Ordinance 1981

Details of the Ordinance are set out below.

Part I - Preliminary  
(Sections 1 to 3)

This Part provides for the title and interpretation of the Ordinance and for Parts I and II to come into operation on the date of notification in the Gazette. The date of operation of the remainder of the Ordinance is to be fixed by the Minister.

Part II - Administration  
(Sections 4 to 25)

Under the scheme there is established a Building and Construction Industry Long Service Leave Board ('the Board') which administers the scheme by providing benefits to eligible employees and contractors, maintaining registers, and making recommendations to the Minister for the Capital Territory regarding the appropriate levy which should be paid by employers and contractors.

In addition, the Board is vested with the usual powers possessed by a body corporate, for example, the power to recover outstanding moneys, to incur legal and other costs and to employ staff.

The Board consists of a Chairman and 2 members appointed by the Minister for a term not exceeding 5 years. The Chairman is a nominee of the Minister, and the members are appointed from lists of names submitted by employer and employee organisations.

Members of the Board are required to disclose any direct or indirect pecuniary interest which they may have in a matter coming before the Board. Where a member fails to make such a disclosure without reasonable excuse, his appointment will be terminated by the Minister.

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The Ordinance expressly provides that the Board will not for any purpose be regarded as the servant or agent of the Executive Government of the Commonwealth.

The Ordinance provides for the appointment of a Registrar, Deputy Registrar and such inspectors as may be considered necessary for the purposes of the Ordinance. The Registrar and his deputy perform administrative duties and functions conferred upon them under the Ordinance.

The Board is empowered to borrow moneys and to enter into contracts, providing the contract price does not exceed \$50,000. For contracts exceeding this amount, the Board requires the approval of the Minister. The Ordinance also requires an actuarial investigation of the Board's moneys every 3 years, or more often if the Board so requests.

In addition to the provisions of the Ordinance, Division 2 of Part XI of the Audit Act 1901 apply to the Board. Under this Division, the Board is required to open and maintain at least one account with an approved bank, paying into the account, or accounts, as the case may be, all moneys received. The Board is also able to invest moneys on deposit with an approved bank, in Commonwealth securities or in a manner approved by the Treasurer. Proper accounts and records of financial statements have to be kept by the Board, and an annual report submitted to the Minister.

#### Parts III and IV Registration of Employers, Employees and Contractors (Sections 26 - 36)

The Board operates 2 registers, one for employers, and the other for employees and contractors. Registration under the Ordinance is mandatory for employers but voluntary for employees and contractors. However, where an employee fails to apply for registration within a prescribed period, his employer may make an application on his behalf.

#### Part V - Periodic Notices and Payments (Sections 37 - 39)

Employers are required to submit to the Board a levy of 2.5% of the ordinary remuneration received by each employee, and contractors registering under the scheme are required to submit the same levy on their own behalf. Similarly, employers and contractors are required to lodge with the Board periodic notices containing details in respect of employment and remuneration. The Ordinance also requires employers to keep records in respect of each employee, dealing with matters relevant to the scheme, for instance, type of work performed by the employee, his remuneration, the number of days worked by the employee and details of any leave granted to the employee.

Part VI - Entries In The Employees and Contractors Register  
(Sections 40 - 45)

A registered employee or contractor accrues service credits while performing building and construction work, when absent from work on annual leave during any period in excess of 4 weeks or when absent from work in order to attend court as a juror or as a witness. An employee will also accrue service credits when absent from work on paid leave (other than annual leave or sick leave), when absent from work due to an injury for which he is entitled to workmen's compensation and when absent from work on sick leave certified by a medical practitioner for a period of between 10 and 110 days in any one year.

A total of 220 days may be accrued by an employee or contractor in one year. However, the scheme includes provision for a bonus of 440 days' continuous service to be credited provided an application for registration is lodged by the employee or contractor within 3 months of the commencement date of the legislation. A further bonus of 440 days is added when that person accrues 10 years' continuous service. A provision is also included for a pro rata calculation of continuous service to be made when such a member ceases to work in the industry due to death, total incapacity or compulsory retirement, provided a period of between 495 days and 10 years of continuous service is credited to him. Similarly, such a member leaving the industry other than by reason of death, total incapacity or compulsory retirement, is entitled to further credits calculated on a pro rata basis provided a period of between 5 and 10 years of continuous service has already been accrued. Apprentices joining the scheme within 3 months of the commencement date are also entitled to benefits under the bonus provisions.

Part VII - Annual Certificates  
(Sections 46 - 48)

Each year, the Registrar is required to provide certificates to employers, employees and contractors, advising them of particular details recorded in the relevant register. These particulars are to include information regarding continuous service credits and payments made to the Board.

Part VIII - Long Service Leave and Payments  
(Sections 49 - 58)

Under the scheme, an employee or contractor who has accrued 10 years continuous service is entitled to long service leave calculated at the rate of 13/15 of a week for each completed year of service in the industry. However where an employee or contractor has accrued between 5 and 10 years of continuous service and leaves the industry permanently, other than by reason of death, total incapacity or compulsory retirement, he is entitled to payment in lieu of long service leave calculated on a pro rata basis. The entitlement to payment in lieu of leave is also extended to employees and contractors who, having between 55 days and 10 years of credits, are required to retire from the industry.

Upon an application being made to the Board either for long service leave pay or for payment in lieu of long service leave, the Board is required to pay to the applicant the amount to which he is entitled. However, in the case of a person leaving the industry for alleged total incapacity, the Board may require the applicant to undergo a medical examination.

Part IX - Miscellaneous  
(Sections 59 - 66)

Under the Ordinance specific provisions are made for an appeal to be made to the Administrative Appeals Tribunal for a review of the Board's decision confirming the Registrar's decision to refuse to register an applicant under the scheme; refusing to extend the time in which periodic notices and levies are to be lodged with the Registrar; determining the ordinary remuneration of an employee or contractor; refusing an objection made in respect of an annual certificate; making or refusing to make a determination in respect of the granting of long service leave; refusing to make a payment for long service leave or in lieu of long service leave; and determining the amount of the payment being due to the employee.

Provision in the Ordinance is also made to allow access to the registers by employers, employees and contractors as of right.

An important ingredient of the scheme is the availability of reciprocal arrangements between schemes operating in the States and the A.C.T. Accordingly, provision is made empowering the Minister to approve a law of another State or Territory following the recommendation of the Board. This allows the Board to grant to an employer an exemption in respect of the levy, or credit an employee or contractor with any credits accrued in the State or Territory. The Minister is also empowered to enter into a

reciprocal arrangement with the relevant State or Territory Minister. Such an arrangement will relate to such things as long service leave payments, information exchange, or any other matters relating to long service benefits considered necessary.

When payments are made to an applicant by a State or Territory authority, the Board is required to re-imburse the authority for that part of the payment which represents continuous service performed in the A.C.T.

Any provision of an award or an agreement which derogates from the terms or benefits conferred by the proposed Ordinance, is inoperative.

B. Long Service Leave (Amendment) Ordinance 1981

The Long Service Leave Ordinance 1976 is amended by the Long Service Leave (Amendment) Ordinance 1981 to incorporate a minor amendment consequential upon the making of the Long Service Leave (Building and Construction Industry) Ordinance 1981.

Section 2 of the Long Service Leave (Amendment) Ordinance 1981 amends section 2 of the Long Service Leave Ordinance 1976 to provide that after the commencement of the Long Service Leave (Building and Construction Industry) Ordinance 1981, a person entering the building and construction industry for the first time will not be subject to the Long Service Leave Ordinance 1976. A new section 2A is inserted to provide that once an employee elects to take benefits under the Long Service Leave Ordinance 1976, he ceases to be an employee for the purposes of that Ordinance.

Ord. No 52/81