

# Building Industry Long Service Leave (Amendment) Bill 1981

## NOTES ON CLAUSES

*Clause 1* contains the usual provisions relating to citation and commencement.

*Clause 2* amends section 4 (3) of the Principal Act to require all penalties recovered for offences against the Act or Regulations to be paid into the Building Industry Long Service Leave Fund. Currently such penalties are paid into the Consolidated Fund.

*Clause 3* inserts new sections 5A and 5B into the Principal Act which give to the Building Industry Long Service Leave Board power to acquire and dispose of interests in land, to construct and maintain buildings on such land, to use any such building or land for its own purposes and to employ persons outside the Public Service Act for the purpose of managing such buildings or land.

*Clause 4* amends section 15 (2) of the Principal Act to provide that long service leave charges in respect of workers must be based on at least minimum award rates of pay.

*Clause 5* amends the Principal Act so as to extend the operation of the Act to cover a worker's first three months of continuous service in the Building and Construction Industry.

*Clauses 6 and 7* provide for the conditions under which shopfitters are to be included in the long service leave scheme set up under the Principal Act. Shopfitters are to be included in the scheme as from 1 March 1982 with the same benefits as the workers currently covered by the scheme.

*Clause 6 (1)* inserts a new sub-section in section 15 of the Principal Act the effect of which is to require long service leave charges to be paid in respect of shopfitters as from 1 March 1982.

*Clause 6 (2)* inserts a new sub-section in section 25 of the Principal Act which precludes employers of shopfitters from receiving any reimbursements from the fund in respect of long service leave payments made to shopfitters prior to 1 March 1982.

*Clause 7* inserts a new section 15c in the Principal Act which requires the employer of a shopfitter with more than 10 years' service to that employer to make a lump sum payment to the Board equivalent to the worker's long service leave entitlement as at 1 March 1982.

*Clause 8* inserts a new section 15D into the Principal Act which enables the Board to make an assessment of long service leave charges where there is insufficient information available to allow such charges to be calculated strictly in accordance with section 15.

*Clause 9* amends section 16 (2) of the Principal Act so that, in cases where a worker's terms of employment do not include a fixed ordinary time rate of pay or a fixed normal weekly number of hours, that worker's entitlement is calculated on the basis of his "ordinary pay" received during the twelve months

prior to *his actual taking* of the long service leave. At present, the calculation is made with reference to the pay received during the twelve months prior to *the accrual* of the leave.

This amendment applies to cases where the entitlement to leave accrued on or after 1 February 1977 and is to operate retrospectively to 1 March 1980.

This clause also amends sub-sections (2) and (5) of section 16 to clarify the intended effect of these provisions and to ensure that wording within the section is consistent.

*Clause 10* amends the Principal Act as follows:

- (a) Sub-clauses (1) (a) and (2) amend section 19 of the Principal Act so as to delete from that section separate reference to absences from work on account of work related injuries. In the future, absences from work on account of illness or injury, however caused, will be treated in the same way;

One effect of this amendment will be that absences from work on account of a work related injury of up to 48 weeks will be counted for the purposes of a worker's entitlement to long service leave;

- (b) Sub-clause (3) makes a consequential amendment to section 20 (3) of the Principal Act;
- (c) Sub-clause (1) (b) and (c) amend section 19 (1) of the Principal Act so as to give the Board a discretion to deem an interval between periods of employment in the building and construction industry which exceeds nine months to be continuous service in the industry.

*Clause 11* amends section 21AA (2) of the Principal Act so as to enable registered working sub-contractors to obtain long service leave benefits from the scheme beyond their initial fifteen years of continuous service in the industry.

*Clause 12* amends section 32 (5) of the Principal Act so as to give the Board power to backdate a determination to the date upon which it considers that an employer first employed workers to perform building and construction work.

*Clause 13* amends section 38 of the Principal Act to enable the Board to refund overpaid long service leave charges without the need for the employer concerned to make specific application for a refund and to extend to seven years the period within which such a refund may be made.

*Clause 14* amends section 40 (2) (a) of the Principal Act so as to enable the Board to recover unpaid long service leave charges in a Magistrates' Court by means of the default summons procedure.

*Clause 15* inserts a new sub-section 52 of the Principal Act which will enable certain Regulations made under the Act to prescribe industrial awards as amended from time to time, thereby obviating the need to amend these Regulations each time a relevant award is varied.