

Agreement in Principle

Mr PAUL LYNCH (Liverpool—Minister for Industrial Relations, Minister for Commerce, Minister for Energy, Minister for Public Sector Reform, and Minister for Aboriginal Affairs) [9.43 p.m.]: I move:

That these bills be now agreed to in principle.

I am pleased to present to the House today the Contract Cleaning Industry (Portable Long Service Leave) Bill 2010 and the Long Service Corporation Bill 2010. The Contract Cleaning Industry (Portable Long Service Leave) Bill 2010 seeks to eliminate the inequity experienced by thousands of contract cleaners who are unable to access long service leave entitlements through no fault of their own. There are approximately 44,000 cleaners working in New South Wales. Around 30,000 of those workers are engaged in connection with commercial cleaning contracts, working for consecutive, unrelated employers and are unable to accrue the requisite 10 years continuous service with a single employer to be eligible for long service leave benefits under the Long Service Leave Act 1955.

It is not unusual for a worker to clock up a few years service with an employer only to have their accrued long service leave reset to zero following the expiration of a contract, even if they are re-hired by the new contract holder. They effectively forfeit the time they have already served despite working in the same building or shopping centre, doing the same work for 10 years and often longer. With the high frequency of the changeover of cleaning contracts, the cycle repeats itself over and over again. The most effective method of addressing this anomaly is to introduce new legislation to establish a statutory portability scheme which recognises a worker's service to the cleaning industry rather than to a single employer.

On 19 August this year I announced that the New South Wales Government was committed to examining the feasibility of a portable long service leave scheme. This was met with overwhelming support from cleaning workers. This bill will give cleaners a fair deal for all the hours they have dedicated to their job. Since then New South Wales Industrial Relations has undertaken a comprehensive consultation process to ascertain the level of industry support for the scheme, to assess the scheme's financial viability and to explore optimum governance and administrative arrangements. Peak industry stakeholders who participated in regular consultation meetings include the Liquor, Hospitality and Miscellaneous Union, the Building Service Contractors' Association of Australia, NSW Division and the Australian Cleaning Contractors Association. I am told that it was immediately evident that each of the stakeholders had considered a scheme of this kind in some detail, with many elements of the proposal meeting with unanimous support and/or a high degree of consensus.

It was also clear that an important factor in the stakeholders' support for the scheme is the strong belief that a comprehensive workplace education and compliance regime will act as a practical deterrent for non-compliant operators and help maintain a level playing field for employers competitively tendering for cleaning services contracts. A leave entitlement rather than a payment in lieu of leave, like that which exists in the building industry, properly addresses the industry-based barriers that workers face in accessing extended leave. The model draws on the content of two similar schemes which have been operative in Queensland and the Australian Capital Territory for a number of years, with some minor modifications to suit New South Wales' circumstances and other practical considerations. Both jurisdictions have provided valuable advice and assistance in the preparation of this proposal.

The scheme is designed to cover contract commercial cleaners and will be funded by a levy on registered industry employers. The levy will be calculated as a prescribed percentage of the ordinary wages of industry workers. At commencement this is proposed to be 1.7 per cent. The scheme will provide a paid long service leave entitlement calculated in line with the New South Wales Long Service Leave Act 1955 and will cover all employees and self-employed contractors performing contracted cleaning work. The scheme will be administered by the Long Service Leave Corporation, also responsible for the existing building and construction portable long service scheme, with the advice and guidance of a tripartite industry committee.

Scheme levies and income will be held in a separate fund, invested with TCorp. The financial performance of the scheme and the rate of the levy will be subject to periodical compulsory actuarial reviews. The scheme will also have reciprocal arrangements with interstate cleaning portability schemes. It is intended that the scheme will commence on 1 July 2011. I now turn to the detail of the bill.

The bill contains a clear definition of cleaning work sourced from the Federal Cleaning Services Modern Award 2010; that is, work carried out that has as its main component the bringing of premises into a clean condition, including incidental and minor property maintenance work. This definition is well understood and accepted by the cleaning industry. Adopting synonymous text minimises confusion and uncertainty as to who is in and who is out. I must be clear that the portability scheme will not apply to cleaners employed directly by schools, hospitals, factories and the like. The bill provides the Minister for Industrial Relations with a delegated authority to declare additional scheme coverage as required. This ensures that the scheme remains responsive and in step with

changes within the cleaning industry.

The scheme will be funded by a levy on industry employers calculated by a prescribed percentage of the ordinary wages of their employees. The levy of 1.7 per cent was recommended by an independent actuarial consultant as sufficient to meet future liabilities and day-to-day operating costs. As I have mentioned, the bill provides that the scheme will undergo rigorous financial analysis at least every two years to ensure that the scheme's performance is sound, that it continues to be able to meet its liabilities and that the levy is maintained at an appropriate level.

Seed funding of approximately \$4 million will be provided by way of a Crown advance from the Treasurer on commercial terms repaid over a period of five years at the prevailing TCorp long-term loan rate, which is currently 5.52 per cent. The bulk of the establishment costs consist of necessary information and technology system programming and upgrades as well as additional staff and their initial training. It is anticipated that the scheme will be self-funding and will not require any further capital injections from the Crown. It should be noted that the bill does not create a new entitlement; it simply extends an existing industrial standard to a group of workers who are currently denied access to such entitlement due to industry-based circumstances or other factors beyond their control.

The bill provides that contract cleaning industry workers will be entitled to 8.67 weeks of long service leave after 3,650 days service in the industry, which is the equivalent of 10 years service, and further entitlements will be available after second and subsequent blocks of 1,825 days, which is the equivalent of five years service—entirely consistent with the benefits available to workers under the general Long Service Leave Act 1955. A worker who has an entitlement to long service leave under the scheme will receive a payment from scheme funds based on their ordinary wage, which includes shift and weekend penalties but not overtime.

Averaging provisions will apply in the event that a worker's weekly wage has fluctuated over time. To protect the integrity of the scheme and to minimise the potential for financial exploitation through artificially inflated wage rates, the bill provides the corporation with the authority to review the wages reported by an employer and to vary it as appropriate. As with the requirements of the general Long Service Leave Act, an employer will be required to grant a period of leave within six months of a worker becoming entitled to it. This can be extended by agreement and in the event an agreement cannot be reached, an employer or worker may apply to the corporation to have an extension approved. Appeals can be reviewed by the Industry Committee if required. The minimum period of leave that can be granted is two consecutive weeks. A pro rata entitlement will be available in defined circumstances—for example, death, disability or permanent exit from the industry.

Significantly the bill provides for a foundation membership bonus of 365 days service credits to industry workers who are registered in the scheme within six months of its commencement. There will be some capacity for the corporation to recognise workers as foundation members outside the prescribed period if exceptional circumstance criteria are met. This one-off bonus is designed to recompense workers for service to the industry prior to the introduction of the scheme. It will be credited immediately after registration and will count towards a worker's eligibility for a future long service leave benefit under the scheme. While the scheme will not recognise prior industry service for the purposes of accessing a long service leave entitlement under the scheme, the bill ensures that contract cleaning industry workers who have been fortunate enough to have continuous service with a single industry employer prior to the commencement of the scheme are not disadvantaged by its introduction.

Provisions are made that clarify the nexus between the operation of the scheme and existing benefits under the general Long Service Leave Act. For example, a contract cleaner who has nine years of service with a single employer and continues to be employed by that employer for 12 months following the commencement of the scheme will apply for long service leave in the usual manner. They do not need to restart the clock, so to speak. In this scenario a split liability will apply. The employer remains directly responsible for the initial nine years service and the scheme is liable for the payment in relation to the service accrued after 1 July 2011. In practical terms, the employer would pay the worker the full amount in the first instance and apply to the corporation for reimbursement for levies paid on a pro rata basis.

Importantly, the bill places a compulsory obligation on employers to register themselves and their employees in the scheme, to provide service records and to pay the requisite levy. Penalty provisions apply for breaches of these obligations. The corporation also has the ability to register eligible employers and workers of their own volition. All administrative, education and compliance services will be integrated within a reconstituted Long Service Payments Corporation, to be known as the Long Service Corporation. Consistent with current arrangements, the chief executive officer of the New South Wales Compensation Authorities Staffing Division would be appointed as chief executive officer. The Long Service Payments Corporation currently has responsibility for administering the Building and Construction Industry Long Service Payments Scheme. Both industry schemes will operate side by side.

Day-to-day and ongoing administrative costs will be calculated and charged on a proportionate basis. This model delivers considerable efficiencies and ensures that the cost of the scheme, and therefore the levy, is kept to a minimum. The bill therefore provides the corporation with sufficient powers and authority to manage the day-to-

day operational aspects of the scheme in a fair, competent and transparent manner. For the sake of consistency and convenience, these provisions are largely derived from the powers and authorities the corporation already has with respect to administering the building and construction portability scheme. Importantly, the corporation will be guided by a tripartite industry advisory committee comprising employer, worker and government representatives.

The Industry Committee will comprise nine members, including one chairperson, two representatives from Unions New South Wales, two representatives from the Liquor, Hospitality, Miscellaneous Workers Union, New South Wales Branch, two representatives from the Building Services Contractors Association and two representatives from the Australian Cleaning Contractors Association. The bill provides the Industry Committee with an identical role and function to the building and construction industry committee, including appellate powers in the event that a worker or employer disputes a decision made by the corporation.

The bill provides that the scheme will commence on 1 July 2011. This allows sufficient time for the corporation to implement the necessary administrative arrangements to get the scheme up and running, including information technology systems and additional staffing. It will also ensure that a comprehensive education and communication strategy can be undertaken to ensure that employers and workers are aware of the new scheme and their obligations and entitlements. I am pleased to say that the peak stakeholders have indicated that they are willing to play a hands-on role by assisting the Government to spread the word to industry through a variety of activities including hosting workshops and advertising in industry publications.

While there will be compliance costs for employers, and potentially additional costs for procurers of cleaning services, including the New South Wales Government, the scheme will deliver considerable benefits to workers and employers. In the course of stakeholder consultation, advice has been received that industry employers currently factor into the tendered contract price a figure of between 1.67 per cent and 2 per cent of a worker's weekly wages to cover the contingent future liability of paying out an accrued long service entitlement under the general Long Service Leave Act 1955. This suggests that there is some capacity for employers providing contracted cleaning services to absorb any increased costs arising from the introduction of the scheme and the statutory scheme can be seen as formalising arrangements for dealing with long service leave and its accrual that a responsible employer should be doing to effectively manage their existing liabilities.

The passage of the bill will mean that for the first time, many cleaning workers, including some of our most vulnerable and marginalised workers—that is, migrants, women and young people—will be able to seek extended respite from the demands of an industry where work schedules are often intense. For employers, a comprehensive workplace education and compliance regime will maintain a level playing field for businesses competing for commercial cleaning work. The Premier recently visited **Liquor, Hospitality and Miscellaneous Union** members in Granville to discuss the proposal, noting that the new legislation demonstrates, yet again, this Government's support for the entitlements of workers throughout New South Wales. She further emphasised that access to long service leave would boost retention rates and increase service standards in the industry.

It should be noted that the former Deputy Prime Minister and Minister for Education, Employment and Workplace Relations confirmed in writing earlier this year that States and Territories retain the authority to administer existing and new portable long service leave schemes. It was made clear that such schemes will remain separate from the Fair Work National Employment Standard for long service leave. I commend the bills to the House.