

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [8.00 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government moves to introduce amendment legislation to modernise and enhance the efficiency of the Building and Construction Industry Long Service Payments Act 1986 (the Act).

This Act underpins the portable Long Service Payment Scheme administered by the Building and Construction Industry Long Service Payments Corporation.

The Scheme rewards some 280,000 building and construction workers for their dedicated service to a physically demanding and economically vital industry.

Last financial year the Corporation paid almost \$55 million dollars in long service payments to building and construction workers.

The scheme was established in recognition of the transient nature of building and construction work that makes it very difficult for builders, electricians, plumbers and other industry workers to qualify for long service leave in the traditional sense.

Generally workers are only entitled to long service leave once they complete ten continuous years of service with their employer.

However, because workers in the building and construction industry move from project to project and from contractor to contractor they are unable to establish continuity of service with a single employer.

The Scheme ensures that all building and construction workers are entitled to a payment for long service after working in the industry for a cumulative 10 year period or beyond.

Benefits are also payable to workers upon retirement, permanent incapacity and death if there has been at least 55 days of work recorded in the scheme.

The Scheme pays the equivalent of 13 weeks pay after 15 years, 8.66 weeks after 10 years and 4.3 weeks after 5 years under special conditions.

Payments are calculated based on industry award rates of pay or pay rates contained in relevant registered agreements.

The Scheme does not impose a direct cost to employers or workers. The scheme is funded by a levy on building and construction projects costed at \$25,000 or more.

The Act was established in 1986 and with the passage of time it has become clear that it would benefit from an update.

Over the last few years the Corporation has actively engaged with stakeholders to ensure that the Act remains responsive to industrial changes, technological developments and is administered in the most effective and efficient way possible.

This includes addressing miscellaneous anomalies that have arisen throughout its operation.

It is important to note that this amendment bill has been developed in close consultation with and is endorsed by the Building and Construction Industry Long Service Payments Industry Committee a body that comprises a combination of union, employer and Government representatives.

In recent years there have been numerous industrial changes at the federal level.

For example, following Work Choices longstanding federal industrial instrument terminology was superseded by a new regime of agreements including Employer Greenfield Agreements and individual Australian Workplace Agreements or AWAs.

The amendment bill seeks to substitute the current definition of 'Commonwealth industrial instrument' with the flexibility of a reserve regulatory power to prescribe specific industrial instruments as amended from time to time.

This amendment will accommodate the requirements of the new federal Fair Work Act 2009 and that the legislation remains in step with contemporary industrial instruments as they evolve over time.

It will also validate long service payments made since March 2006 that were calculated based on post Work Choices agreements.

The amendment bill also contains a number of amendments that underpin advances in technology that have facilitated a shift to online service delivery and a streamlined registration and reporting process.

Over the last couple of years the Corporation has developed and implemented a suite of online tools to enable employers to register with the Scheme and lodge service records used to record and verify a workers service credits electronically.

The overwhelming majority of employers and a growing number of workers registered in the scheme utilise these online services to meet their reporting obligations.

Importantly the online services section of the LSPC website www.lspc.nsw.gov.au provides employers and workers with 24 hour access to their service records.

Employers are also able to update the employment periods of their workers any time.

The amendment bill therefore removes onerous and outdated paper based processes including the issue of certificates of service and periodical notice requirements currently contained in the Act.

The continuation of these obligations would impose an unnecessary red tape burden and their removal is of course consistent with the Government's priority of reducing red tape.

The Corporation continues to promote the efficiencies provided by using the online services and encourage those that have not yet embraced the updated technology to do so.

First time users and indeed anyone experiencing difficulties accessing the facility can rely on practical support and assistance provided by the Corporation by telephone, email or over the counter.

The amendment bill clarifies the registration process including an employer's obligation to advise the Corporation of the commencement date and other relevant details of a worker within seven days of the worker commencing building and construction work.

The amendment bill also contains enhanced measures to protect the Corporation's levy revenue and ensure that the existing long service levy is maintained at a minimal rate.

It does so by addressing loopholes that leave the scheme vulnerable to exploitation.

For example, in its current form, the Act does not contain any limitations of the maximum rate of pay used to calculate a long service benefit.

This leaves the scheme exposed to abuse by unscrupulous employers who may attempt to maximise long service benefits for working directors or friends or family working for a small company by negotiating agreements with artificially inflated rates of pay well in excess of the industry standard.

Clearly, this has the potential to impact upon the future financial viability of the scheme and undermines fairness and equity of payments made to workers in the industry.

To address this risk, the amendment bill introduces a reserve regulatory power to set minimum and maximum limits on pay rates used to calculate long service payments. This power could be utilised if widespread abuses and exploitation were found.

The appropriate level of the maximum pay rate is yet to be determined. The Minister for Industrial Relations will continue to consult the Industry Committee who will make recommendations on the operation, amendment or repeal of any such regulation to determine the calculation of a long service payment.

Further, the amendment bill seeks to limit the ordinary hours used to calculate a long service payment to a maximum of 38 hours.

This reflects the industry standard and circumvents agreements that have been negotiated with a standard working week in excess of this and often incorporating inbuilt overtime.

It is also consistent with the ordinary hours of work stipulated in the federal Fair Work Act 2009.

The amendment bill will ensure parity with workers in other industries who are covered by the general Long Service Leave Act that explicitly excludes overtime in the calculation of long service leave payments.

It also preserves fairness and equity between workers working side by side in the building and construction industry.

To eliminate confusion regarding the cancellation or suspension of workers registrations, the amendment bill also provides a definition of the terms 'suspend' and 'suspended'.

The Act in its current form requires the Corporation to cancel the registration of a registered worker if the worker has not been credited with at least 5 years service and has not been credited with service for four years.

It also allows the Corporation to suspend the registration of a registered worker who has at least 5 years service credits but has not been credited with service for four years.

Unfortunately the current Act does not define what the term suspended means and its practical implications.

This lack of clarity about the distinction between a cancelled or suspended registration has meant that many thousands of inactive workers have remained on the Scheme's register and continued to receive regular correspondence from the Corporation including Annual Statements from the Corporation as required by the Act.

The Audit Office raised concerns about the large numbers of inactive workers on the register in its report to Parliament in 2007. Legal advice was sought and the Corporation undertook a bulk cancellation of some 150,000 inactive workers in early 2009.

In defining the terms, the practical implications of a suspension are detailed including effective dates, appeal mechanisms and so forth.

These changes will assist the Corporation in maintaining the Scheme including conducting regular cancellation activities to ensure the register remains up to date and reduce the costs associated the Scheme's administration.

The amendment bill will extend appeal rights to a deceased workers beneficiary or nominated representative to allow them to challenge a decision to cancel a registration or refuse service credits.

Appeals are heard and determined by the independent Industry Committee.

The Government recognises that it is important that the interests of a worker are protected and this is an appropriate way to achieve such protection.

The amendment bill also clarifies the calculation of service credits for part-time workers.

Workers engaged to carry out building and construction and other work, are entitled to a full day of service when the majority of that day is spent undertaking building and construction work.

Additionally, the amendment bill will allow the Corporation to reject periods of service from the calculation of reimbursement of long service payments where employers have provided long service leave entitlements to employees; when an employer has failed to advise the Corporation within the required timeframe, and a further two years has elapsed.

The amendment bill also seeks to improve compliance arrangements relating to the payment of levies.

Specifically, Crown Bodies (while not responsible for paying levies on building projects put to tender) will be required to sight proof of payment of the long service levy in relation to any works on which a levy is required to be paid by the contractors.

This bill also enables the Corporation to determine the person to whom a refund of a long service levy is to be paid.

This need for this amendment has arisen from a large number of homebuilders going into administration or liquidation and not completing building projects.

This leads to administrators approaching the Corporation seeking a refund of levies already paid.

Internal investigations indicate that in a significant number of cases the levy is paid from the homeowner's deposit.

The proposed amendment to the Act allows some discretion by the Corporation to refund the levy to the family rather than the bankrupt developer's trustee or administrator.

The amendment bill also provides for a regulation to prescribe and update the established deadline for applications for refund in relation to levies that have been paid in error.

The majority of applications for refunds are submitted by owner builders and represent a relatively small dollar value.

The current deadline is three months. It is proposed that it be immediately extended to 12 months.

This amendment bill follows an extensive consultation process with the industry over a number of years and represents changes that are driven by business needs and fully supported by both the workers and employers in the building and construction industry.

There are many changes contained within this bill that will clarify the regulatory provisions of the Corporation and will provide for improvements in efficiency and effectiveness across various areas of operations of the Corporation and the long service payments scheme.

The amendment bill consolidates a number of enhancements to the legislation that underpins a highly valued long service payments scheme.

It will deliver significant benefits to all industry stakeholders.

Market research and survey activities have consistently revealed a high level of worker and employer satisfaction with the Corporation's services.

The Corporation should be very proud of its solid reputation in the industry.

This amendment bill will ensure that the Corporation continues to administer an effective, well understood and responsive long service payments scheme for employers and workers in the building and construction industry.

I commend this bill to the House.