

**CONSTRUCTION INDUSTRY PORTABLE PAID LONG SERVICE LEAVE
AMENDMENT (COVID-19 RESPONSE) BILL 2020**

Introduction and First Reading

Bill introduced, on motion by **Mr W.J. Johnston (Minister for Industrial Relations)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [10.32 am]: I move —

That the bill be now read a second time.

The bill that I am introducing today achieves three things. Firstly, it will provide much needed financial relief to many workers in the construction industry; secondly, it will assist in stimulating the economy through the release of those funds; and, thirdly, it will rectify an anomaly in the current legislation with respect to accruing service during periods of stand down. The COVID-19 global pandemic has had far-reaching economic impacts, resulting in financial hardship for many Western Australian families. Workers in the construction industry have felt these effects and moving forward may do so over the next 12 months during the recovery period. Some of these workers have sought assistance from the government and requested access to their accrued entitlements. The government believes that this is a fair and compassionate response that will also stimulate the economy.

Under the Construction Industry Portable Paid Long Service Leave Act 1985, employees in the Western Australian construction industry are provided with portable long service leave. This means that employees retain their long service leave should they move between employers in the industry. The scheme is funded through employer contributions paid to the statutory authority established in the act—that is, the Construction Industry Long Service Leave Payments Board, trading as MyLeave. This bill seeks to amend that act by providing a mechanism for financial relief for up to 18 500 employees in the construction industry. It achieves this by enabling earlier access to pro-rata long service leave entitlements at five years of service, in lieu of the current seven years. This early access to long service leave entitlements will be for only a temporary period of 12 months during the recovery phase of the pandemic. The gross benefit by allowing pro-rata access at five years rather than seven years through this bill will vary depending on the length of workers' service and wages. At an average weekly wage of \$1 610 for employees in the scheme, the benefit will range from \$6 900 for 4.3 weeks' leave after five years of service to \$9 800 for 6.1 weeks' leave after seven years of service. These payments form part of wages and will therefore be subject to normal income tax requirements.

Access to these entitlements may also be available to those employees who have achieved at least four years of service on 1 April 2020 and can accumulate the required five years of service by the completion of the 12-month access period. Similarly, any worker who has had their registration with the scheme cancelled from 1 April 2020 due to a break in service that is more than allowed, will be reinstated to enable them to claim a benefit if they have met the minimum five years of service or if they achieve this by the conclusion of the access period. The government has received requests from construction workers seeking to gain access to these funds due to their current financial circumstances and the impact of COVID-19. Should all those who are eligible wish to take their entitlement as part of this initiative, the full financial effect would be approximately \$160 million. Likewise, if half the workers access the financial relief, the financial effect will be a release of funds of around \$80 million. Any funds released under this program will assist in providing a stimulus to the economy.

The scheme administered by MyLeave holds the funds on behalf of the construction workers and can accommodate all the payments without affecting the long-term sustainability of the scheme. This has been confirmed by independent actuarial advice procured by the board. However, it is unlikely that all eligible workers will wish to access this entitlement as many will continue to work in the construction industry and accrue service to achieve the normal vesting of pro-rata long service leave at seven years. Realistically, it is difficult to predict how many workers will access, should they wish to do so, the temporary financial relief available to them, and any such release will provide stimulus to the economy. The legislative changes to allow the release of these funds for use by construction workers need to be implemented urgently to have the desired effects of supporting those experiencing financial hardship as a result of COVID-19 and also assist in stimulating the economy.

The bill also rectifies the anomaly of not allowing an employee to accrue service for the purposes of the act during a period of being stood down. This is inconsistent with the state Long Service Leave Act 1958, which provides that service is continuous when an employee is stood down. This means that employees in other industries would be eligible for continuous service in circumstances when they have been stood down, whilst construction workers are not. This is patently unfair to construction workers who are not able to work due to being stood down as a result of the COVID-19 pandemic. This anomaly became apparent when the commonwealth passed legislation to put in place the JobKeeper scheme, through which employees who were stood down received a JobKeeper payment. The

pandemic has caused many employees, including construction workers, to be stood down. The anomaly is exacerbated, as under the act employers within the MyLeave scheme are required to continue to make contributions to the scheme. These contributions are for the future long service leave entitlements of employees who are stood down, but are being made without the employee being eligible for service to be recorded towards that future entitlement.

Standing down is defined to be a JobKeeper stand down direction or for another reason under the commonwealth Fair Work Act 2009, stood down under an industrial instrument or in prescribed circumstances. The prescribed circumstances provide for a situation in which references to sections of the Fair Work Act 2009 may change and no longer be relevant, other legislation is introduced similar to JobKeeper, or in other unknown circumstances, meaning that the section does not work as intended.

Due to the portable nature of long service leave entitlements under the act, it is necessary to distinguish between a casual employee who is stood down for the purpose of accruing a day of service, and a casual employee whose employment is terminated. The requirement that a casual employee must have been working in that employment on a regular and systematic basis during the previous 12-month period is similar to the definition of “long-term casual” in the Fair Work Act 2009, and is similarly included within the meaning of “eligible employee” for the JobKeeper scheme. Standing down workers became prevalent with the introduction of the JobKeeper scheme. Therefore, it is intended that the recording of service during a period of standdown will be retrospectively applied from 1 April 2020. This will not penalise employers, as they are required to make contributions for their employees who have been stood down in any event.

The McGowan government has already made financial relief available to employers in the construction industry with a substantial reduction in the MyLeave levy. The levy has been reduced from one per cent of wages to 0.01 per cent for six months effective from July 2020. This is a 99 per cent reduction in the levy cost for the construction industry, representing an immediate saving of \$12 million to \$14 million for construction companies. Ideally, this amount would have been waived entirely but for the legislation that requires a levy amount to be prescribed and does not allow for a nil amount to be set.

I hope that this COVID-19 response bill will get broad support from members and be given timely passage, as a fair and compassionate measure to ensure that our construction workers are supported in a time of need by using their own entitlements, to ensure that service is fairly counted, and to stimulate the economy.

I commend the bill to the house.

Debate adjourned, on motion by **Mr A. Krsticevic**.