

**Construction Industry Portable Paid Long
Service Leave Amendment (COVID-19
Response) Bill 2020**

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Western Australia

LEGISLATIVE ASSEMBLY

**Construction Industry Portable Paid Long
Service Leave Amendment (COVID-19
Response) Bill 2020**

A Bill for

***An Act to amend the Construction Industry Portable Paid Long
Service Leave Act 1985.***

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Construction Industry Portable Paid Long Service*
3 *Leave Amendment (COVID-19 Response) Act 2020*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 come into operation on the day on
7 which this Act receives the Royal Assent (*assent day*);
8 (b) sections 3, 4(1), (3) and (4) and 5 are deemed to have
9 come into operation on 1 April 2020;
10 (c) the rest of the Act comes into operation on the day after
11 assent day.

12 **3. Act amended**

13 This Act amends the *Construction Industry Portable Paid Long*
14 *Service Leave Act 1985*.

15 **4. Section 3 amended**

16 (1) In section 3(1) delete the definition of *day of service* and insert:

17

18 *day of service* has the meaning given in section 3B;

19

20 (2) In section 3(1) insert in alphabetical order:

21

22 *COVID recovery period* means the period of
23 12 months beginning on the day on which the
24 *Construction Industry Portable Paid Long Service*
25 *Leave Amendment (COVID-19 Response) Act 2020*
26 section 4(2) comes into operation;

27

1 (3) In section 3(1) insert in alphabetical order:
2

3 *stood down* has the meaning given in subsection (3B);
4

5 (4) After section 3(3a) insert:
6

7 (3B) For the purposes of this Act, an employee is stood
8 down in respect of a day if —

- 9 (a) the employee is employed by an employer on
10 the day; and
- 11 (b) the employee would usually work in that
12 employment on the day; and
- 13 (c) 1 of the following applies in relation to that
14 employment —
- 15 (i) the employee is given a jobkeeper
16 enabling stand down direction
17 authorised by the *Fair Work Act 2009*
18 (Commonwealth) section 789GDC for
19 the day;
- 20 (ii) the employee is stood down for the day
21 under the *Fair Work Act 2009*
22 (Commonwealth) section 524(1);
- 23 (iii) the employee is stood down for the day
24 under an industrial instrument;
- 25 (iv) the employee is stood down for the day
26 in the prescribed circumstances.
27

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1 **5. Section 3B inserted**

2 After section 3 insert:

3

4 **3B. Day of service**

5 (1) For the purposes of this Act, a day of service is —

6 (a) a day in respect of which an employee is
7 entitled to receive ordinary pay, including a day
8 on which the employee is —

9 (i) on long service leave under this Act; or

10 (ii) on annual leave in excess of 4 weeks in
11 any period of 12 months; or

12 (iii) on paid sick leave;

13 or

14 (b) a day in respect of which an employee is stood
15 down, if the employee is —

16 (i) not a casual employee; or

17 (ii) a casual employee of an employer who
18 has been working in that employment
19 on a regular and systematic basis during
20 the period of 12 months ending on the
21 day.

22 (2) If an employee is stood down for a period of days, the
23 reference in subsection (1)(b)(ii) to the day is a
24 reference to the first day of the period.

25

1 **6. Section 6 amended**

2 In section 6(1)(b)(ii) delete “Chamber of Commerce and
3 Industry of Western Australia (Inc);” and insert:

4
5 Chamber of Commerce and Industry of Western Australia
6 Limited;

7
8 **7. Section 22 amended**

9 (1) In section 22(1):

10 (a) delete “section 24A(1),” and insert:

11
12 sections 24A(1) and 24B(2),

13
14 (b) before paragraph (a) insert:

15
16 (aa) if the termination occurs during the period
17 beginning on 1 April 2020 and ending on the
18 last day of the COVID recovery period and the
19 employee has completed at least 5 years of
20 service but less than 7 years of service, a sum
21 which bears the same proportion to the money
22 value of the entitlement referred to in
23 section 21(1)(a) as the period of service
24 completed bears to 10 years; or

25
26 (2) In section 22(2) delete “24A(1),” and insert:

27
28 24A(1) or 24B(2),
29

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1 (3) After section 22(2) insert:
2

3 (2A) If an employee dies during the period beginning on
4 1 April 2020 and ending on the last day of the COVID
5 recovery period, subsection (2) applies in relation to
6 the employee as if the reference to 7 years of service
7 were a reference to 5 years of service.
8

9 **8. Section 23 amended**

10 After section 23(1) insert:
11

12 (1A) Subsection (1) does not apply to a person during the
13 COVID recovery period if on 1 April 2020 the person
14 had been engaged as an employee for any number of
15 days exceeding 880 days of service.
16

17 **9. Section 24A amended**

18 In section 24A(2) delete “27,”.

19 Note: The heading to amended section 24A is to read:

20 **Proportional leave in advance after 7 years’ service**

21 **10. Section 24B inserted**

22 After section 24A insert:
23

24 **24B. Proportional leave in advance after 5 years’ service**
25 **during COVID recovery period**

26 (1) This section applies during the COVID recovery
27 period.

28 (2) An employee with at least 5 years of service in the
29 construction industry may, with the consent of the

1 employee's employer, take advance long service leave
2 for not longer than the period which bears the same
3 proportion to the length of the employee's service then
4 completed as the period of 8 $\frac{2}{3}$ weeks bears to 10 years,
5 and where leave is so taken, the employee is not
6 entitled to further long service leave or a payment
7 under section 22(1) for the period of service in respect
8 of which advance long service leave has been taken.

9 (3) Sections 24(3), 28 and 29 apply to and in relation to the
10 taking of advance long service leave by an employee
11 under subsection (2) in the same way as they apply to
12 and in relation to the taking of long service leave by an
13 employee under an entitlement conferred by
14 section 21(1).
15

16 **11. Section 29 amended**

17 In section 29(a) delete "21 or 24A; and" and insert:

18

19 21, 24A or 24B; and
20

21 **12. Schedule Division 3 inserted**

22 At the end of the Schedule insert:
23

24 **Division 3 — Construction Industry Portable Paid Long**
25 **Service Leave Amendment (COVID-19 Response) Act 2020**

26 **4. Persons removed from register during**
27 **pre-commencement period to be re-registered**

28 (1) In this clause —

29 *pre-commencement period* means the period beginning on
30 1 April 2020 and ending immediately before the day on
31 which the *Construction Industry Portable Paid Long*

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- 1 *Service Leave Amendment (COVID-19 Response) Act 2020*
2 section 8 comes into operation.
- 3 (2) If, during the pre-commencement period, the Board causes
4 the name of a person to be removed under section 23(1)
5 from the employees register and on 1 April 2020 the person
6 had been engaged as an employee for any number of days
7 exceeding 880 days of service, the Board must cause the
8 person to be re-registered as an employee under this Act.
- 9 (3) If a person is re-registered —
- 10 (a) the entitlements, obligations and liabilities of all
11 persons are taken to be, and to have always been,
12 the same as if the Board had not caused the name of
13 the person to be removed; and
- 14 (b) anything done, or purportedly done, is as valid and
15 effective, and is to be taken to have always been as
16 valid and effective, as it would have been if the
17 Board had not caused the name of the person to be
18 removed.
- 19 (4) In this clause, a reference to the doing of anything includes a
20 reference to an omission to do anything.
21

22
