



## Long Service Leave Legislation Amendment (Telstra) Bill 2009

Steve O'Neill  
Economics Section

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## Long Service Leave Legislation Amendment (Telstra) Bill 2009

**Date introduced:** 16 September 2009

**House:** House of Representatives

**Portfolio:** Employment and Workplace Relations

**Commencement:** The Act commences, or is taken to have commenced, on 23 November 2009.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

To ensure that federal public sector long service leave legislation continues to cover Telstra's workforce until national long service leave provisions under the Fair Work Act's National Employment Standards come into effect.

### Background

Long service leave is a period of paid leave granted to employees as a reward after a period of continuous employment (usually) with the one employer. It is estimated that 21.3 per cent of employees (2.2 million) were employed by their current employer/business for 10 years or more and thus are likely to qualify for long service leave credits.<sup>1</sup>

The Australian Labour Law Reporter traces the origin of the standard long service leave entitlement to a 1964 decision of the then Commonwealth Conciliation and Arbitration Commission. Its first arbitrated long service leave award provided 13 weeks' leave after 15 years' service, with pro rata payment in lieu of termination after 10 years' service. For many years this was the standard entitlement. However, New South Wales, Queensland and South Australia, the Australian Capital Territory and the Northern Territory have since adopted qualifying periods of 10 years or less, in State and Territory long service leave

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1. Explanatory Memorandum, Long Service Leave Legislation Amendment (Telstra) Bill 2009, p. xxiii.

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legislation.<sup>2</sup> As is explained below, the *Fair Work Act 2009* (FW Act) preserves State and Territory long service leave entitlements for national system employees.

The background to long service leave entitlements of Telstra employees was outlined in the Parliamentary Library's Bills Digest no 40, 2006-07. It was noted that the long service leave entitlement of Commonwealth Government employees is provided for under the *Long Service Leave (Commonwealth Employees) Act 1976*. The basic qualification for long service leave is that the person is, (or was), 'employed in Government service' and has been continuously employed in one or more forms of 'qualifying service' (that is, Commonwealth Government service or recognised prior service) for a period of at least ten years.<sup>3</sup> The *Telstra Corporation Act 1991* incorporates the Commonwealth long service leave entitlements for Telstra employees in a number of provisions.

The *Telstra (Transition to Full Private Ownership) Act 2005* inserted transitional and saving provisions in the *Telstra Corporation Act 1991* that protected employee long service leave entitlements as well as paid maternity leave entitlements arising from pre-sale employment service that otherwise would be foregone due to the sale of Telstra. Telstra employees continue to accrue long service leave entitlements under the Commonwealth Long Service Leave Act.

The *Long Service Leave (Commonwealth Employees) Amendment Act 2006* extended the operation of the Long Service Leave (Commonwealth Employees) Act in respect of Telstra employees for a period of three years after the day on which the Commonwealth would cease to have a controlling interest in Telstra, ie to 24 November 2009. According to then Minister for Employment and Workplace Relations, the Hon Kevin Andrews, the reason for the three year extension was:

to allow Telstra and those employees who have not yet concluded other arrangements a sensible time frame to first consider and then make long service leave arrangements that will best suit their needs post privatisation.<sup>4</sup>

The Rudd Government however intends to develop a long service leave scheme in consultation with the States and Territories for the national workforce. Currently, long service leave constitutes one component of the ten employment conditions applicable to

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2. CCH, 'Origins of the benefit' *The Australian Labour Law Reporter* at ¶32-830.

3. R Bell, 'Long Service Leave (Commonwealth Employees) Amendment Bill 2006', *Bills Digest*, no. 40, Parliamentary Library, Canberra 2006-07, viewed 15 October 2009, [http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/TY5L6/upload\\_binary/ty5164.pdf;fileType=application/pdf#search=%22long%20service%20leave%20bell%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/TY5L6/upload_binary/ty5164.pdf;fileType=application/pdf#search=%22long%20service%20leave%20bell%22)

4. K Andrews, Minister for Employment and Workplace Relations, 'Second reading speech: Long Service Leave (Commonwealth Employees) Amendment Bill 2005', House of Representatives, *Debates*, 11 October 2005, p. 2.

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national system employees under the National Employment Standards (NES) of the FW Act.<sup>5</sup> The NES will come into effect on 1 January 2010.

The FW Act allows State and Territory laws to continue to operate in respect of long service leave.<sup>6</sup>

In the absence of the proposed national long service leave scheme, the NES will preserve long service leave entitlements in pre-modernised awards from January 2010. If an employee does not have applicable award-derived long service leave terms, any entitlement to long service leave may be derived from State or Territory long service leave legislation.<sup>7</sup> Minister Gillard's initial award modernisation request to the Australian Industrial Relations Commission specifically prevented the inclusion of long service leave clauses in modern awards.<sup>8</sup> Discussions between state and federal workplace relations ministers aim to formulate a standard long service leave clause under the NES over 2009-2010.

According to the Minister Gillard's second reading speech on this Bill, when the 2006 extension for Telstra employees expires on 24 November 2009, Telstra will need to transition from the Long Service Leave (Commonwealth Employees) Act to multiple State and Territory schemes (per the FW Act), then back to a Commonwealth scheme when the new NES long service leave arrangements are implemented.<sup>9</sup>

The provisions of this Bill provide a further extension of Commonwealth long service leave standards for Telstra employees until the Government puts in place new NES clauses in the FW Act providing for long service leave.

## Financial implications

The measures proposed in this Bill have no impact on the budget.

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5. Long service leave is provided in the *Fair Work Act 2009* under Part 2-2, Division 9 – Long service leave.
  6. FW Act: section 27.
  7. FW Act: section 113.
  8. The text of the award modernisation request is contained in the Appendix to Bills Digest 72, 2007–08, refer to paragraph 33, viewed 15 October 2009, [http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/NTUP6/upload\\_binary/ntu\\_p65.pdf;fileType=application/pdf#search=%22workplace%20relations%20oneilsen%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/NTUP6/upload_binary/ntu_p65.pdf;fileType=application/pdf#search=%22workplace%20relations%20oneilsen%22)
  9. J Gillard, Minister for Education, Employment and Workplace Relations, 'Second reading speech: Long Service Leave Legislation Amendment (Telstra) Bill 2009' House of Representatives, *Debates*, 16 September 2009, p. 9.

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## Main provisions

**Schedule 1** of the Bill amends three Acts, namely the *Telstra Corporation Act 1991* (the Telstra Act), the *Telstra (Transition to Full Private Ownership) Act 2005* (the Telstra Transition Act) and the *Long Service Leave (Commonwealth Employees) Act 1976* (the LSL Act)—the purpose of the amendments being to extend the transitional long service leave arrangements that apply to Telstra employees pending development of the national long service leave arrangements.

Division 1 of Part 3A of the Telstra Act currently sets out the transitional arrangements that apply to the long service leave entitlements of employees employed by Telstra at the time the LSL Act ceases to apply.

The Telstra Transition Act provides amongst other things, for cessation of LSL Act coverage to Telstra employees. This cessation is currently set at 24 November 2009, that is the third anniversary of the ‘designated day’<sup>10</sup>.

**Items 8 and 9** in **Schedule 1** are the main amendments. They would amend the Telstra Transition Act with the effect of allowing for the extension of the application of the LSL Act to Telstra for a further period—namely until the ‘LSL changeover day’ which will be the day when the national long service leave scheme is put in place.

**Items 3 to 7** in **Schedule 1** amend the Telstra Corporation Act to reflect this extension of time. They mainly remove references to ‘third anniversary of the designated day’ and replace them with the phrase ‘LSL changeover day’. The ‘LSL changeover day’ is defined as ‘the day on which item 4 of Schedule 1A of the Long Service Leave (Commonwealth Employees) Regulations) is repealed or otherwise ceases to have effect’ (**item 4**).<sup>11</sup> The effect of these items is to ensure that the transitional arrangements with respect to long service leave entitlements in the Telstra Act apply from LSL changeover day, rather than the third anniversary of the designated day. While complicated in its drafting, the intention is that change over day will effectively be the day when the national long service leave scheme is put in place.

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10. The designated day being the day declared under section 3 of the Telstra Transition Act as the day on which the Commonwealth ceased to have a majority shareholding in the company.

11. The Explanatory Memorandum explains that item 4 of Schedule 1A of the LSL Regulations is the mechanism through which the LSL Act applies to Telstra. This will be repealed when the national long service leave scheme is put in place.

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## **Concluding comments**

The provisions of the Bill in effect, constitute a ‘transfer of business’ mechanism, facilitating the preservation of an entitlement prior to it being incorporated as a national standard.

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