

2022

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Long Service Leave (Portable Schemes) Amendment Bill 2022

REVISED EXPLANATORY STATEMENT

**Presented by
Mick Gentleman MLA
Minister for Industrial Relations and Workplace Safety**

Long Service Leave (Portable Schemes) Amendment Bill 2022

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The *Long Service Leave (Portable Schemes) Act 2009* (the Act) establishes portable long service leave for the following four industries: building and construction; contract cleaning; community sector; and security.

The Building and Construction Scheme came into effect in 1981, the Contract Cleaning Scheme in 2000, the Community Sector Scheme in 2010, and the Security Scheme in 2013. All schemes are prescribed in schedules to the Act.

The purpose of the Long Service Leave (Portable Schemes) Amendment Bill 2022 is to:

- expand access to portable long service leave, under the Act, to workers in the hairdressing and beauty services industry and the accommodation and food services industry to deliver on the *Parliamentary and Governing Agreement for the 10th Legislative Assembly* commitment to “amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession”
- amend the Act to incorporate the hairdressing and beauty services industry and the accommodation and food services industry within the Contract Cleaning Industry Scheme, renamed the “Services Industry Scheme”, and consequential technical amendments to the Act to support the expanded scheme and renaming. These consequential, technical amendments, continue existing arrangements for the expanded industries within the Act, including to give effect to reciprocating State arrangements under a corresponding law in relation to payments of long service leave
- correct legacy delegation arrangements relating to the employment of staff by the ACT Long Service Leave Authority (the Authority), clarifying the Chief Executive Officer’s powers to employ staff of the Authority under the *Public Sector Management Act 1994*
- correct delegation arrangements for the purposes of the default insurance fund advisory committee under the *Workers Compensation Act 1951*, and
- transfer delegation arrangements for the appointment of authorised officers under the *Labour Hire Licensing Act 2020* from the Director-General to the Labour Hire Licensing Commissioner.

The types of work covered under the hairdressing and beauty services industry include:

- barbers, beauty services, electrolysis services, hairdressing services, make-up services, nail care and skin care services and tanning services.

The types of work covered under the accommodation and food services industry include:

- accommodation services covering camping ground operation, caravan park operation, holiday house/flat operation, hotel/motel/resort operation, serviced apartments, youth hostel operation, and
- food services covering cafes, restaurants and takeaway food services, pubs, taverns and bars and clubs.

CONSULTATION ON THE PROPOSED APPROACH

In considering the expansion of the Act to the hairdressing and beauty services industry and the accommodation and food services industry the ACT Government undertook a consultation process. The consultation process comprised:

- release of a consultation paper on the Workplace Safety and Industrial Relations, Chief Minister, Treasury and Economic Development Directorate website inviting submissions from the community
- writing to stakeholder groups, including industry associations and peak bodies, unions and other business and employee representatives, to advise of the consultation process and invite submissions in response to the proposal
- conducting stakeholder engagement sessions with industry and employee representative groups, and
- engagement with employer and employee representatives through the ACT Work Health and Safety Council.

The outcome of stakeholder consultation, which included written submissions on the publicly released consultation paper¹ and verbal feedback at stakeholder engagement sessions, was divergent; with employee groups in favour of expanding the long service leave portable schemes and employer/industry groups against any proposed expansion of the schemes.

Stakeholder views were considered in establishing the scope of the industries to be covered by expansion of the long service leave portable schemes.

¹ https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0006/2013765/Portable-Long-Service-Leave-Expansion-Consultation-Paper-June-2022.pdf

CONSISTENCY WITH HUMAN RIGHTS

Rights promoted

The Bill may be considered to engage and promote the following rights under the *Human Rights Act 2004*:

- Right to work and work-related rights;
- Right to recognition, equality and non-discrimination.

Right to Work and Work-Related Rights

The Long Service Leave (Portable Schemes) Amendment Bill 2022 positively engages and promotes the right to work and work-related rights for employees in the hairdressing and beauty services industry and the accommodation and food services industry.

A very high proportion of workers in these industries are unable to access traditional long service leave entitlements.

The Bill provides workers in these industries with access to leave entitlements afforded to workers in industries with comparable rates of job mobility and insecure work.

Long service leave is well established in Australia with a high degree of consensus regarding its benefits. Long service leave enables employees to recover their energies and return to work renewed, refreshed, and reinvigorated, after long periods of service. There are many well recognised positive impacts to supporting long service leave for employers and employees, including improved employee health and wellbeing, which in turn contributes to improved productivity.

Increased mobility in employment has meant that long service leave in its traditional form has become inaccessible to many workers.

Workforce mobility is high across Australia with 9.5 per cent of employed people during the year ending February 2022 changing jobs, the highest rate since 2012.² Around one in five left their job within less than one year and more than a third of employed people left their job within the past one to four years.³ Relevantly, traditional long service leave entitlements in the Territory accrue at seven years' service under the *Long Service Leave Act 1976* (1976 LSL Act).

Job mobility is one factor that influences job security and equity in access to long service leave entitlements, however there are a number of other relevant factors such as the prevalence of short-term/temporary contracts, casualisation or part-time rates, companies wrapping up and the proportion of female workers. The ACT was

² Australian Bureau of Statistics, *Job Mobility*, Released 24 May 2022, <https://www.abs.gov.au/statistics/labour/jobs/job-mobility/latest-release>

³ Refer footnote 2 above.

reported as having the highest job mobility rate at 12.8 per cent, followed by Western Australia and the Northern Territory.⁴

Portable long service leave was introduced to promote equity of access by allowing workers to port their long service leave entitlements between employers within a covered industry. The expansion of the Act to include the hairdressing and beauty services industry and the accommodation and food service industry seeks to further address inequity in access to long service leave.

Portable long service leave, unlike traditional long service leave, allows for breaks in service where a worker would not lose accumulated leave and can continue to accumulate long service leave on recommencing employment in a covered industry.

By recognising and encouraging loyalty and professional development within these industries, the schemes benefit employees by facilitating sustainable career paths while providing a variety of work opportunities. The schemes in turn benefit employers and consumers by encouraging the retention of skilled workers within the industry.

Noting a proportion of workers in sectors such as hairdressing and beauty services and accommodation and food services are limited in their ability to access traditional long service leave entitlements it is recognised that there may be an adjustment in short term business operating expenses and how businesses account for leave entitlements due to the fact that contingent long service leave liabilities arising under the 1976 Act are only required to be recorded after five years of service not quarterly as per the Act. However, it is further noted that a high proportion of workers in the hairdressing and beauty services industry and accommodation and food services industry are limited in accessing their leave entitlements, as these liabilities are largely never paid with workers leaving their employer before they are eligible to access accrued long service leave.

Experience from introducing other regulatory frameworks that require compliance with workplace laws and standards shows this has a flow on effect of increasing general compliance.

Arrangements under the long service leave portable schemes allow administering authorities to identify broad, systematic compliance issues and ensure workers receive their workplace entitlements.

A transition period of two years for commencement of the expanded coverage is proposed to allow time for businesses and workers in the new industries to prepare for the changes and register with the Authority. It is further designed to ensure that the Authority's information technology systems and administrative services are ready for the new entrants to the schemes. This is considered necessary given the size of the proposed increase to the schemes.

The expansion of the long service leave portable schemes to the hairdressing and beauty services industry and the accommodation and food services industry does not have an ACT Government budget impact.

⁴ Refer footnote 2 above.

Right to equality and non-discrimination

The Long Service Leave (Portable Schemes) Amendment Bill 2022 positively engages and promotes the right to equality and non-discrimination for women in the hairdressing and beauty services industry and the accommodation and food services industry.

A high proportion of women employed in these industries are unable to access traditional long service leave entitlements.

The Bill provides women employed in these industries with access to leave entitlements afforded to workers in industries with comparable rates of job mobility and insecure work such as contract cleaning and community services. It further supports the recognition and equity of women through the expansion of the portable schemes to industries traditionally dominated by women – noting that the building and construction industry, as a traditionally male dominated sector, has been entitled to portable long service leave since 1981.

The limitations on access to traditional long service leave entitlements are particularly pronounced for women. This is because women disproportionately take on carer responsibilities,⁵ and subsequently report work/life conflict significantly more than men.⁶ Women who have children are also more likely to take extended (unpaid) breaks from employment,⁷ which hinders accumulation of conventional long service leave benefits.

Women are also more likely than men to be in casual or part-time employment, and therefore are less likely to be employed with one employer for the required service period under the *Long Service Leave Act 1976* (1976 Act). Women are therefore less likely to be able to access long service leave within the requirements of the 1976 Act.⁸

Portable long service leave was introduced to mitigate these inequities by allowing workers to port their long service leave entitlements between employers within a covered industry. The expansion of the Act to include the hairdressing and beauty services industry and the accommodation and food service industry seeks to further address these inequities.

The Long Service Leave (Portable Schemes) Amendment Bill 2022 provides long service leave for employees in defined industries who cannot access long service leave entitlements under the LSL Act as they did not remain with the same employer for a long enough period. It enables employees who choose to remain in defined industries, or have breaks in service, to accrue long service leave entitlements through continuous industry service rather than through service with one employer.

⁵ Tanya Carney, 'The Employment Disadvantage of Mothers: Evidence for Systemic Discrimination' (2009) *Journal of Industrial Relations* 51(1), 113-130.

⁶ Natalie Skinner et al, *The Big Squeeze: Work, home and care in 2012* (2012); Centre for Work and Life, *Australian Work and Life Index 2012* (University of South Australia, Adelaide).

⁷ Above n 4.

⁸ https://mckellinstitute.org.au/wp-content/uploads/2022/02/McKell_Portable_LongService.pdf

CLAUSE NOTES

Clause 1 Name of the Act

This clause provides the name of the Act as *Long Service Leave (Portable Schemes) Amendment Act 2022*.

Clause 2 Commencement

This clause provides the commencement of provisions under the Act.

Clause 3 Legislation amended

Clause 3 provides that the Act amends the *Long Service Leave (Portable Schemes) Act 2009* and other legislation described in schedule 1.

Clause 4 Who is an *employer*? Section 7 (1)

This clause substitutes section 7(1) and makes technical amendments to clarify the intent of the definition of an employer for an industry covered under the Act as a person who engages any employees that work in the covered industry.

Clause 5 What is *work*? Section 11, definition of work, paragraph (a) (ii) and note 2

This clause omits *cleaning work* and substitutes *services work* consequential on expanding the contract cleaning industry scheme to become the services industry scheme.

Clause 6 Division 8A.1 heading

This clause substitutes the heading of division 8A.1 with “*The authority and governing board*” consequential on the new division 8A.1A being inserted under clause 8 that deals with staff of the authority.

Clause 7 Deputy Registrar Section 79H (1) and notes

This clause substitutes this section and provides who the registrar must appoint as deputy registrar for the authority.

Clause 8 Section 79J

This clause substitutes section 79J with the meaning of *staff of the authority* and provides for the employment of staff. The section also contains a transitional provision regarding public service staff. This clause covers the engagement of consultants, delegation by the registrar and other arrangements for staff and facilities.

Clause 9 Transitional—entitlement to payment instead of leave New Section 97A (3)

This clause inserts transitional signposts to the *contract cleaning industry*, and *pre-amendment Act*. Transitional arrangements are made within the Bill to ensure administration of the portable schemes can continue without impediment on commencement of the Bill’s provisions. This ensures that a worker’s entitlements under the Act are retained without interruption.

Clause 10 New section 97B

This clause inserts a transitional section on entitlement to payment instead of leave for a person who became a registered worker on or after 1 July 2012.

Clause 11 New part 12

This clause inserts transitional provisions for the continuity of obligations in relation to the contract cleaning industry to continue under the expanded 'services industry', including definitions, registered employers and workers, applications for registration, service credit, and transitional regulations.

For this purpose, a transitional regulation making provision (a form of Henry VIII clause) is included that allows the transitional clauses in part 12 to be adjusted should unforeseen circumstances arise that affect a transitional matter.

A transitional regulation making power is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Any transitional regulations made under section 114 of the Bill would cease to operate on the expiry of part 12 in clause 11.

This part expires 5 years after the commencement day to ensure the smooth transition of all registered workers currently registered in the contract cleaning industry scheme across to the services industry scheme, including for registered workers who may have temporarily left the scheme for less than four consecutive years.

Clause 12 What is the *building and construction industry*? Schedule 1, section 1.1 (1) (b), except note

Clause 12 makes a substitution in relation to a reciprocating state to clarify the intent of reciprocal recognition arrangements applying to corresponding portable long service leave laws in other states.

Clause 13 Schedule 2, section 2.1 and 2.2

This clause substitutes the sections to include a definition of the *services industry*, *ANZSIC*, and *services work*. This section gives effect to the expanded industry under schedule 2 to cover the cleaning services industry, hairdressing and beauty services industry and the accommodation and food services industry.

Clause 14 Service Credit- contract cleaning industry—s 64 Schedule 2, section 2.4

This clause omits *cleaning work* and substitutes *services work* consequential on expanding the contract cleaning industry scheme to become the services industry scheme.

**Clause 15 Leave payments for service as registered employee—contract cleaning industry
Schedule 2, section 2.12 (2), definition of R, paragraph (b), example**

This clause omits *cleaning industry* and substitutes *services industry* consequential on expanding the contract cleaning industry scheme to become the services industry scheme.

Clause 16 Leave payments for service as registered voluntary member—contract cleaning industry Schedule 2, section 2.13 (3) (a)

This clause omits *contract cleaning scheme industry funds* and substitutes *services industry scheme funds* consequential on expanding the contract cleaning industry scheme to become the services industry scheme.

**Clause 17 What is the community sector industry?
Schedule 3, section 3.1 (1) (b) and note**

This clause makes a substitution in relation to a reciprocating state to clarify the intent of reciprocal recognition arrangements applying to corresponding portable long service leave laws in other states.

**Clause 18 Entitlement to payment instead of leave—community sector industry
Schedule 3, section 3.9 (1)**

This clause substitutes this section regarding entitlement to payment instead of leave to allow for workers to access payment entitlements instead of leave after a specified period of recognised service if they have permanently left the industry. This amendment ensures consistency across the various industry schemes with the building and construction industry scheme in Schedule 1 of the Act.

Clause 19 What is *security industry*? Schedule 4, section 4.1 (1) (b), except note

This clause makes a substitution in relation to a reciprocating state to clarify the intent of reciprocal recognition arrangements applying to corresponding portable long service leave laws in other states.

Clause 20 Schedule 4, section 4.1 (2), definition of security activity, new note

This clause inserts a note to assist in the interpretation of security activities for the purposes of the Act clarifying that certain people are exempt from the application of the *Security Industry Act 2003* and are therefore not covered by the security industry scheme in schedule 4 of the Act.

**Clause 21 Entitlement to payment instead of leave—security industry
Schedule 4, section 4.9 (1)**

This clause substitutes the section regarding entitlement to payment instead of leave to allow for workers to access payment entitlements instead of leave after a specified period of recognised service if they have permanently left the industry. This amendment ensures consistency across the

various industry schemes with the building and construction industry scheme in Schedule 1 of the Act.

Clause 22 Dictionary, definitions of *cleaning work* and *contract cleaning industry*

This clause omits these definitions as they are no longer required.

Clause 23 Dictionary, new definitions

This clause inserts definitions in the dictionary for *registered employee* and *registered voluntary member*.

Clause 24 Dictionary, new definitions

This clause inserts definitions in the dictionary for *services industry* and *services work* consequential on expanding the contract cleaning industry scheme to become the services industry scheme.

Clause 25 Dictionary, new definition of *staff of the authority*

This clause inserts a definition of *staff of the authority* consequential on the amendments in clause 8 of this Bill.

Clause 26 Further amendments, mentions of *contract cleaning industry*

This clause omits *contract cleaning industry* and substitutes *services industry* in various provisions consequential on expanding the contract cleaning industry scheme to become the services industry scheme.

Schedule 1 Other amendments

This schedule makes technical amendments to other legislation.

Schedule 1 omits *director-general* and substitutes *commissioner* in sections 47 and 48 of the *Labour Hire Licensing Act 2020*. The schedule also substitutes the section 49 heading of the *Labour Hire Licensing Act 2020* to read: *49 Authorised person must show identity card on exercising power*.

This schedule also omits *regulator* and substitutes *director-general* in various sections of the *Workers Compensation Act 1951*.