



Australian Capital Territory

Long Service Leave (Portable Schemes) Amendment Act 2012

A2012-9

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Australian Capital Territory

Long Service Leave (Portable Schemes) Amendment Act 2012

A2012-9

An Act to amend the *Long Service Leave (Portable Schemes) Act 2009*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Long Service Leave (Portable Schemes) Amendment Act 2012*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Long Service Leave (Portable Schemes) Act 2009*.

**4 Who is an employer?
Section 7 (3) (e)**

omit

a person

substitute

an entity

**5 Who is a *contractor*?
New section 10 (2)**

insert

- (2) Also, an individual who is a working director of an employer for a covered industry is taken to be a *contractor* for the industry.

**6 Declarations by Minister—coverage of Act
New section 11 (1A)**

insert

- (1A) The Minister may also declare, for this Act—
- (a) a person not to be an employer for a covered industry; or
 - (b) an individual not to be a contractor for a covered industry; or
 - (c) an individual not to be an employee, or an employee of a stated employer, for a covered industry; or
 - (d) work, or an activity, not to be work in a covered industry.

**7 Delegation by authority
Section 19**

omit

any other

substitute

a

**8 Employers registration
New section 30 (2) to (4)**

insert

- (2) The register may be kept in any form, including electronically, that the authority decides.
- (3) The registrar may correct a mistake, error or omission in the employers register.
- (4) The registrar may change a detail included in the register to keep the register up-to-date.

**9 Dealing with applications after end of 1-month period
Section 33**

omit

**10 Workers register
New section 39 (2) to (4)**

insert

- (2) The register may be kept in any form, including electronically, that the authority decides.
- (3) The registrar may correct a mistake, error or omission in the workers register.
- (4) The registrar may change a detail included in the register to keep the register up-to-date.

**11 Application by employers for registration of employee
Section 41 (2) and note**

substitute

- (2) The employer must register the employee at the time the employer next submits a quarterly return under section 49 (Quarterly returns by employers).

Note If a form is approved under s 92 for this provision, the form must be used.

12 Sections 47 and 48

substitute

47 Service credit—employee’s prior service

- (1) This section applies in relation to an employee’s service in a covered industry for work done in the industry no earlier than 4 years before the employee became a registered worker for the industry.
- (2) The registrar may credit the employee with 1 day’s service in the workers register for the covered industry for each day of the service if the employee’s employer has, in relation to the employee for the day, given the authority—
 - (a) a return under section 49 (Quarterly returns by employers) that includes the employee; and
 - (b) payment of the levy under section 51 (Determination of levy—employers) for the return.

- (3) If subsection (2) does not apply, the registrar may credit the employee with 1 day's service in the workers register for the covered industry for each day of service in the 1-year period before the employee's registration if the registrar is satisfied that the person was employed in the covered industry.

Example

The registrar is satisfied that Joe, in the 1-year period before his registration day, had separate periods of service as an employee in the contract cleaning industry of 25 and 125 days. The registrar may credit Joe in the workers register for the contract cleaning industry with 150 days service.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) To remove any doubt, an employee is not entitled to credit for service in a covered industry in relation to work done before the industry became a covered industry.

48 Service credit—contractor's prior service

- (1) This section applies in relation to a contractor's service in a covered industry for work done in the industry not earlier than 1 year before the contractor became a registered contractor for the industry.
- (2) The registrar may credit the contractor with 1 day's service in the workers register for the covered industry for each day worked—
- (a) either—
- (i) for which the contractor gives the board a record of the particulars mentioned in section 58 (1) (Registered contractors to keep records) for the contractor's service; or
- (ii) if the registrar is satisfied the contractor worked in the covered industry; and

- (b) for which the contractor has paid the authority the levy determined under section 56 (Determination of levy—contractors).
- (3) To remove any doubt, a contractor is not entitled to credit for service in a covered industry in relation to work done before the industry became a covered industry.

13 **Quarterly returns by employers**
Section 49 (2) (a)

omit

14 **Section 51**

substitute

51 **Determination of levy—employers**

- (1) Levy is payable by employers for a covered industry on the ordinary remuneration paid or payable by employers to employees.
- (2) The Minister may determine the levy payable by employers for a covered industry.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

- (3) The governing board must, from time to time, recommend in writing to the Minister the levy that should be payable by employers for a covered industry.
- (4) Before making a determination, the Minister must have regard to any recommendation made under subsection (3), but need not follow it.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (6) For this section:
employee does not include an apprentice.

**15 Civil penalty—fail to give quarterly returns etc
Section 52 (2)**

after
or part of a month,
insert
for a number of consecutive months not exceeding 3 months,

**16 Exemption from levy payments—working directors
Section 53**

omit

**17 Quarterly returns by contractors
Section 54 (2)**

after
registered contractor
insert
up to 2 months

18 New section 54 (2A)

insert

- (2A) A person is taken not to be registered as a contractor for a covered industry 3 months after the day of the end of a quarter if the person fails to give the authority a return within 3 months after the end of the quarter.

**19 Review of ordinary remuneration by governing board
Section 60 (3) and (4)**

substitute

- (3) Not later than 1 month after being given the notice, a person mentioned in subsection (2) may ask the board to take into account anything set out in writing about the matter.

**20 Notice of governing board decisions on review of
ordinary remuneration
Section 61 (1)**

omit

7 days

substitute

14 days

**21 Removing people from workers register
Section 65 (4) (c)**

omit

working director or

22 Part 7 heading

substitute

**Part 7 Access to long service leave
register information**

23 Sections 67 to 69

substitute

67 Information for registered workers

The registrar must provide each registered worker access to the following information kept on the workers register:

- (a) the number of days of service from the worker's registration day to the end of the previous financial year that the worker has been credited with in the workers register;
- (b) the number of days of service the worker has been credited with in the financial year in which the information is being accessed;
- (c) the total ordinary remuneration paid to the worker during the previous financial year by a registered employer;
- (d) if the worker is a contractor—the total amount paid by the contract under section 56 (Determination of levy—contractors) for the previous financial year.

68 Information for employers

The registrar must provide each registered employer access to the following information kept on the employers register:

- (a) the name of each registered worker for the employer recorded in the workers register;
- (b) for each registered worker for the employer—
 - (i) the number of days of service, from the registration day to the end of the previous 12 months that the worker has been credited with in the workers register; and
 - (ii) the number of days service that the worker has been credited with for the previous financial year;

- (c) the total amount paid by the employer under section 51 (Determination of levy—employers) for the previous financial year.

Example

access or download information from a website

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

69 Certified copies of long service leave registers

- (1) On application by an employer, a registered worker or a person acting on behalf of the employer or worker, the registrar must give the applicant a certified copy of any part of the register that relates to the employer or worker.

Note A fee may be determined under s 91 for this provision.

- (2) A person who is given a certified copy under this section may object to the registrar about the accuracy of a matter stated in the copy.
- (3) An objection must be made in writing within 6 months after the day the certified copy is given to the person objecting.

Note For how documents may be given, see the Legislation Act, pt 19.5.

- (4) If an objection is made, the governing board must decide the objection and if allowing the objection, give an amended certified copy to the person who objected.

Note The registrar may correct a mistake, error or omission in the workers register—see s 30 and s 39.

**24 Appointment of inspectors
Section 71**

omit

director-general

substitute

registrar

**25 Identity cards
Section 72**

omit

director-general

substitute

registrar

**26 Definitions—pt 9
Section 80, new definition of *internally reviewable decision***

insert

internally reviewable decision—see section 80A (1).

27 New sections 80A to 80C

insert

80A Internal review of certain decisions

- (1) This section applies to a reviewable decision made by the registrar (an *internally reviewable decision*).
- (2) A person whose interests are affected by an internally reviewable decision may apply in writing to the governing board for internal review of the decision.

- (3) The governing board must review the decision.

80B Applications for internal review

- (1) An application for internal review of an internally reviewable decision must be made within—
 - (a) 28 days after the day when the applicant is told about the decision by the registrar; or
 - (b) any longer period allowed by the governing board, whether before or after the end of the 28-day period.
- (2) The application must set out the grounds on which internal review of the decision is sought.
- (3) The making of the application for internal review of the decision does not affect the operation of the decision.

80C Internal review

- (1) The governing board must review an internally reviewable decision, and confirm, vary or revoke the decision, within 28 days after the governing board receives the application for internal review of the decision.
- (2) As soon as practicable after reviewing the decision, the governing board must give written notice of the decision on the internal review to the applicant.

28 Section 82

substitute

82 Review of decisions by ACAT

The following people may apply to the ACAT for review of a decision made by the governing board:

- (a) an entity mentioned in schedule 4, column 4 in relation to the decision;
- (b) an entity mentioned in schedule 4, column 4 in relation to the decision if—
 - (i) the original decision was an internally reviewable decision; and
 - (ii) the entity applied to the governing board for review of the decision and the governing board made a decision in relation to the internally reviewable decision;
- (c) any other person prescribed by regulation.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

**29 Inspection of register
Section 85**

omit

**30 Benefits under other laws—reimbursement of employer
Section 89 (2) (b)**

omit

governing board

substitute

registrar

31 New section 90A

insert

90A Authority reimbursement of certain payments

- (1) An employer of a registered worker may apply to the registrar for reimbursement of a payment made directly to an employee.

Note If a form is approved under s 92 for this provision, the form must be used.

- (2) The registrar may—
- (a) reimburse the amount sought in the application if the registrar is satisfied that—
 - (i) the employee to whom the reimbursement relates was paid a long service leave entitlement under this Act; and
 - (ii) the amount the employer applies for reimbursement is the amount the authority would have paid the employee; or
 - (b) in any other case—refuse the application.

32 New section 97A

insert

97A Transitional—entitlement to payment instead of leave

- (1) This section applies to a person who is a registered worker in a covered industry immediately before the commencement of this section.
- (2) The following sections, as in force immediately before the commencement of this section, continue to apply in relation to the person:
- (a) for a registered worker in the building and construction industry—schedule 1, section 1.8;

- (b) for a registered worker in the contract cleaning industry—
schedule 2, section 2.8;
- (c) for a registered worker in the community sector industry—
schedule 3, section 3.9.

33 Long service leave formula—building and construction industry
Schedule 1, section 1.5, formula

substitute

$$W = 0.13 \times \frac{RS}{220}$$

34 Amount of leave—building and construction industry
Schedule 1, section 1.6 (2)

after

construction industry

insert

who has 10 years or more recognised service

35 Entitlement to payment instead of leave—building and construction industry
Schedule 1, section 1.8 (1)

omit

5 years

substitute

7 years

36 Schedule 1, section 1.8 (2)

omit everything before paragraph (a), substitute

- (2) Also, this section applies to a registered worker for the building and construction industry if the worker has 5 years recognised service and any of the following apply to the worker:

37 Schedule 1, section 1.8 (3)

omit

**38 Payment for leave—building and construction industry
Schedule 1, section 1.9 (2)**

substitute

- (2) The authority must pay to the applicant the amount payable under section 1.11 (How are leave payments worked out for the building and construction industry?) if the registrar is satisfied that—
- (a) the applicant is entitled to long service leave under this Act for work done in the building and construction industry; and
 - (b) the applicant has been granted leave by the applicant's employer.

39 Schedule 1, section 1.9 (3)

omit everything after

subsection (2)

substitute

not later than 21 days after the worker's application has been made.

**40 Leave payments for service as registered contractor—
building and construction industry
Schedule 1, section 1.13 (3)**

substitute

- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
- (a) if the construction industry scheme funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
 - (b) if the fund did not make a return or made a loss—nil.

**41 Amount of leave—contract cleaning industry
Schedule 2, section 2.6 (1)**

omit

10 years

substitute

7 years

**42 Entitlement to payment instead of leave—contract
cleaning industry
Schedule 2, section 2.8 (2)**

omit everything before paragraph (a), substitute

- (2) Also, this section applies to a registered worker for the contract cleaning industry if the worker has 5 years recognised service and any of the following apply to the worker:

**43 Payments for leave—contract cleaning industry
Schedule 2, section 2.9 (2)**

substitute

- (2) The authority must pay to the applicant the amount payable under section 2.11 (How are leave payments worked out for the contract cleaning industry?) if the governing board is satisfied that—
- (a) the applicant is entitled to long service leave under this Act for work done in the contract cleaning industry; and
 - (b) the applicant has been granted leave by the applicant's employer.

44 Schedule 2, section 2.9 (3)

omit everything after

subsection (2)

substitute

not later than 21 days after the worker's application has been made.

**45 Leave payments for service as registered contractor—
contract cleaning industry
Schedule 2, section 2.13 (3)**

substitute

- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
- (a) if the contract cleaning scheme industry funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
 - (b) if the fund did not make a return or made a loss—nil.

**46 Court or tribunal—not employer
Schedule 3, section 3.4, note**

omit

a person

substitute

an entity

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

omit everything before paragraph (a), substitute

- (1) This section applies to a registered worker for the community sector industry if the worker has 5 years recognised service and any of the following apply to the worker:

**48 Payments for leave—community sector industry
Schedule 3, section 3.10 (2)**

substitute

- (2) The authority must pay to the applicant the amount payable under section 3.12 (How are leave payments worked out for the community sector industry?) if the registrar is satisfied that—
- (a) the applicant is entitled to long service leave under this Act for work done in the community sector industry; and
 - (b) the applicant has been granted leave by the applicant's employer.

49 Schedule 3, section 3.10 (3)*omit everything after*

under subsection (2)

substitute

21 days after the application has been made.

**50 Leave payments for service as registered contractor—
community sector industry
Schedule 3, section 3.14 (3)***substitute*

- (3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—
- (a) if the community sector industry scheme funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or
 - (b) if the fund did not make a return or made a loss—nil.

**51 Reviewable decisions
Schedule 4, table, item 2***substitute*

2	32 (2)	refuse to register person as employer	person	registrar
---	--------	--	--------	-----------

52 Schedule 4, table, item 11*omit*

53 Schedule 4, table, items 16 and 17, column 2

omit

69 (3)

substitute

69 (4)

54 Schedule 4, table, items 18 to 22

substitute

18	89 (2) (b)	not satisfied that amount paid by employer was properly paid	employer	registrar
19	90A (2)	refuse reimbursement of direct payment of long service leave	employer	registrar
20	sch 1, 1.7 (5) (b), sch 2, 2.7 (5) (b) or sch 3, 3.8 (5) (b)	refuse to allow additional period	applicant	governing board
21	sch 1, 1.8 (4), sch 2, 2.8 (3) or sch 3, 3.9 (2)	not satisfied that section applies to applicant	applicant	governing board

22	sch 1, 1.9 (2), sch 2, 2.9 (2), or sch 3, 3.10 (2)	not satisfied that applicant entitled to long service leave	applicant	governing board
23	sch 1, 1.10 (6), sch 2, 2.10 (6) or sch 3, 3.11 (6)	not satisfied that applicant entitled to payment instead of long service leave	applicant	governing board

55 Dictionary, new definitions

insert

apprentice means an apprentice other than a school-based apprentice.

school-based apprentice means an apprentice to whom a school-based training arrangement, undertaken as part of a course of secondary education, applies.

56 Dictionary, definition of *working director*, new note

insert

Note For this Act, a working director is taken to be a contractor—see s 10.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 December 2011.

2 Notification

Notified under the Legislation Act on 4 April 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Long Service Leave (Portable Schemes) Amendment Bill 2012, which originated in the Legislative Assembly as the Long Service Leave (Portable Schemes) Amendment Bill 2011 and was passed by the Assembly on 20 March 2012.

Clerk of the Legislative Assembly

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