

2016

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

LONG SERVICE LEAVE (PORTABLE SCHEMES) AMENDMENT BILL 2016

EXPLANATORY STATEMENT

**Presented by
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Purpose of the Bill

The *Long Service Leave (Portable Schemes) Act 2009* (the Act) establishes portable long service schemes 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 2016 is to amend the Act to:

- extend the community sector and contract cleaning portable long service leave schemes to allow workers in the aged care and waste sectors respectively, to have similar long service leave entitlements currently available to workers already in these schemes;
- allow the Long Service Leave Authority to make minor adjustments to employer levies to meet the prevailing economic circumstances of covered industries;
- resolve a technical issue by retrospectively clarifying the scope of the Building and Construction Industry Scheme; and
- correct minor and typographical issues.

Extending the Community Sector scheme to aged care workers

Aged care workers form part of the Health and Social Assistance division of the Australian and New Zealand Standard Industrial Classification (ANZSIC). The classification provides a framework for organising data about businesses by enabling grouping of business units carrying out similar activities.

The two principal forms of care provided to older ACT residents are residential aged care and community aged care:

Residential aged care supports elderly people who are unable to live independently at home. There are two levels of aged care homes: low level and high level, formerly known as hostels and nursing homes.

Community aged care supports the elderly to live independent lives at home. These services include domestic assistance, gardening and maintenance, meals and shopping, medication supervision, personal care, nursing, palliative, and respite care.

Both residential and community aged care services employ direct care workers including nurse practitioners, registered nurses, enrolled nurses, personal and community care attendants, and allied health professionals. Both services also employ ancillary support workers including caterers, gardeners, and a range of administrative and management staff.

Unlike the other portable schemes (which cover specific occupations within each industry), the community sector scheme captures all occupations within the industry.

Accordingly, to promote consistency with the existing community sector scheme, the amendments provide for all classes of aged care workers to be included. This will also

promote regulatory efficiency by clearly identifying covered workers (i.e. all workers employed by an aged care employer), and therefore minimise ongoing employer administrative and accounting costs.

Extending the Contract Cleaning scheme to waste workers

The ACT waste management sector is roughly divided between waste collection services (e.g. garbage collection under government contracts and commercial waste removal), and waste treatment, disposal and remediation services (e.g. landfills, recycling facilities).

Except for a small number of administrative and support staff, the labour force in the waste management sector consists of drivers and sorters:

Drivers are characterised as being long term employees who normally work full time. They frequently perform the same role for decades. However, contracts and companies may change hands. This can make it difficult for drivers to take advantage of long service leave.

Sorters work at recycling and landfill sites to sort recycling and waste for processing. These roles are characterised by high levels of turnover.

Unlike the community sector scheme, the contract cleaning scheme was designed to be narrow rather than broad. Under this scheme, only particular classes of occupations within the industry are covered, and then only where a 'contract' for cleaning services is entered into (i.e. ad hoc cleaning is excluded).

To promote consistency with the existing contract cleaning scheme, the amendments provide for the scheme to be extended only to garbage collectors (i.e. drivers under ACT Government waste collection contracts) and sorters at waste management facilities nominated by ministerial declaration. This will promote regulatory efficiency by clearly identifying covered workers (i.e. only drivers, and sorters at specified facilities) and therefore minimise ongoing employer administrative and accounting costs.

New mechanism for minor adjustments to employer levy rates

Long service leave entitlements under the Act are funded through a levy (a percentage of ordinary remuneration) charged to employers in each covered industry.

Currently, the levy rate for each industry is determined by the Minister, following recommendation from the Authority's Governing Board, which in turn is advised by an appointed actuary. A triennial review of each industry is carried out by the actuary and advice on the appropriateness of the levy is provided.

The amendments provide that the Governing Board of the Authority be empowered, but not obliged, to make minor adjustments to the levy rate if the ratio of total assets over total liabilities moves outside a prescribed bandwidth.

Any changes approved by the Board would be made in light of advice from the Authority's appointed actuary. The levy may only be varied after providing formal advice to the Minister and must be less than or equal to a variation of 40 basis points per financial year of the current levy for that covered industry.

This approach will allow the Board to make timely adjustments based on a set rationale that is linked to returns.

Technical issue with the Building and Construction scheme

Schedule 1, section 1.2(1), states that ‘building and construction work’ occurs where there is work in the building and construction industry and this work is covered by a prescribed award.

Examination of the scope of the construction industry’s portable long service leave scheme has revealed that in the current and evolving industrial relations environment, modern awards are decreasing in relevance as more industries rely on other forms of industrial agreements to cover their obligations to their workers under the national workplace relations framework.

To prescribe certain awards for the purpose of the Act would inadvertently exclude an increasing amount of workers from portable long service entitlements.

The Bill modifies the test of what is building and construction work to exclude prescribed awards and, in order to ensure the integrity of worker’s entitlements, it will be applied retrospectively.

This amendment will neither expand nor contract the coverage of the scheme. The corrected scheme will continue to capture employers and workers currently regulated by the Authority.

Human Rights Considerations

No provisions in this Bill engage rights under the *Human Rights Act 2004*.

Climate Change Vulnerability Assessment

The measures contained in the Bill have negligible climate change effects.

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DETAIL

1 Name of Act

This clause provides the name of the Act is the *Long Service Leave (Portable Schemes) Amendment Act 2016*.

2 Commencement

This clause provides that the Act commences on 1 July 2016.

3 Legislation amended

This clause provides that this Act amends the *Long Service Leave (Portable Schemes) Act 2009*.

4 Section 51 (2), new note

This clause inserts a new note indicating the governing board may determine minor changes to a levy payable by registered employers in a covered industry (clause 6 below refers).

5 Section 56 (1), new note

This clause inserts a new note indicating the governing board may determine minor changes to a levy payable by a registered contractor in a covered industry (clause 6 below refers).

6 New section 56A - Minor changes to levy—employers and contractor

This new section applies when the governing board is considering a recommendation to the Minister under section 51 (3) (Determination of levy—employers) or section 56 (2) (Determination of levy—contractors) to make a variation to a levy for a covered industry.

If the recommendation for the levy payable by a covered industry is a change to the current levy that is less than or equal to a variation of 40 basis points, then the governing board may determine by notifiable instrument the levy for the industry.

The governing board may only make minor variations to the relevant levy up to a maximum of 40 basis points in any 12 month period.

New section 56A also requires that if the governing board determines the levy, the board must tell the Minister in writing about the determination.

7 Functions of governing board - New section 79I (aa)

This clause inserts new section 79I (aa) to add to the list of functions of the governing board the function of determining minor changes to the levy for employers and contractors under section 56A

8 What is *building and construction work*?

This clause substitutes a new schedule 1, section 1.2 (1) to provide that building and construction work can be:

- (a) work in the building and construction industry; or it can be the
- (b) direct supervision of a worker carrying out work in the building and construction industry.

It now omits the test of also requiring that the work be covered by a prescribed award.

The Minister may declare work or an activity to be building and constructions work (see s 12 (2) (d)) or to not be building and construction work (see s 13 (2) (d)).

9 Schedule 1, section 1.2 (2), definition of *prescribed award*

This clause omits the definition of *prescribed award* as it is no longer a test for the meaning of building and construction work.

10 Schedule 1, new section 1.2 (3) and (4)

This clause provides for a new section 1.2 (3) to enable the retrospective application of the amended schedule 1, section 1.2 so it is taken to have effect on and from 1 January 2010.

11 Schedule 2, section 2.2

This clause substitutes a new section 2.2 (1) to include in the list of work that is *cleaning work*, the collection of waste and the sorting of waste at, or for, an identified waste management facility if the employer providing the work through the provision of services does so under a contract with the Territory.

The Minister may declare work or an activity to be cleaning work (see s 12 (2) (d)) or to not be cleaning work (see s 13 (2) (d)).

The Minister may determine by notifiable instrument that a facility is an identified waste management facility for the purposes of this section.

A note has also been included to highlight that the definition of *cleaning work* was broadened to include the collection and sorting of waste with effect from 1 July 2016.

12 What is the *community sector industry*?
Schedule 3, section 3.1, new paragraphs (a) (ia) and (ib)

This clause provides for new subparagraphs (a) (ia) and (ib) in schedule 3, section 3.1 to include in the list of what the ***community sector industry*** is, the industry of providing residential aged care services and the industry of providing community aged care services.

13 Schedule 3, section 3.1, new note

This clause inserts a new note to highlight that the definition of ***community sector industry*** was broadened to include residential aged care services and community aged care services with effect from 1 July 2016.

14 Schedule 3, section 3.2 definition of *community sector work*

This amendment brings this section into line with drafting changes to the other schedules and does not make a substantive change.

15 What is *security work*?
Schedule 4, section 4.2 definition of *security work*

This amendment brings this section into line with drafting changes to the other schedules and does not make a substantive change.

16 Schedule 4, section 4.5 heading

This clause corrects a minor technical error to the heading of this section.