

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations)

Long Service Leave (Community Sector) Amendment Bill 2009

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Long Service Leave (Community Sector) Amendment Bill 2009

A Bill for

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

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

- 1 **1 Name of Act**
- 2 This Act is the *Long Service Leave (Community Sector) Amendment*
3 *Act 2009*.
- 4 **2 Commencement**
- 5 This Act commences on 1 July 2010.
- 6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).
- 8 **3 Legislation amended**
- 9 This Act amends the *Long Service Leave (Portable Schemes)*
10 *Act 2009*.
- 11 **4 What is a covered industry?**
12 **New section 6 (c)**
- 13 *before the notes, insert*
- 14 (c) the community sector industry.
- 15 **5 Section 6, new note 3**
- 16 *insert*
- 17 *Note 3* *Community sector industry*—see sch 2A, s 2A.3.
- 18 **6 When is work outside the ACT work?**
19 **Section 13 (2), new note 4**
- 20 *insert*
- 21 *Note 4* *Community sector work*—see sch 2A, s 2A.2.

1 **7 Removing people from workers register**
2 **Section 65 (3)**

3 *substitute*

4 (3) However, subsection (2) (b) does not apply if the person would, but
5 for the person ceasing to be registered, have been entitled to
6 payment for the period under—

7 (a) schedule 1, section 1.8 (Entitlement to payment instead of
8 leave—building and construction industry); or

9 (b) schedule 2, section 2.8 (Entitlement to payment instead of
10 leave—contract cleaning industry); or

11 (c) schedule 2A, section 2A.9 (Entitlement to payment instead of
12 leave—community sector industry).

13 **8 Benefits under other laws—election**
14 **Section 88 (1) (c)**

15 *omit*

16 the contract cleaning industry

17 *substitute*

18 a covered industry

19 **9 New schedule 2A**

20 *insert*

21 **Schedule 2A Long service leave payments—**
22 **community sector industry**

23 **2A.1 Long service leave—community sector industry**

24 A registered worker for the community sector industry is entitled to
25 long service leave in accordance with this schedule.

1 **2A.2 What is *community sector work*?**

- 2 (1) Work is *community sector work* if it is—
- 3 (a) work carried out in the ACT in the community sector industry
- 4 other than work declared under subsection (2); or
- 5 (b) work, or an activity, declared to be work in the community
- 6 sector industry under section 11.
- 7 (2) The Minister may declare work not to be work for the community
- 8 sector industry.
- 9 (3) A declaration is a disallowable instrument.

10 *Note* A disallowable instrument must be notified, and presented to the

11 Legislative Assembly, under the Legislation Act.

12 **2A.3 What is the *community sector industry*?**

13 The *community sector industry* is—

- 14 (a) in relation to the ACT—
- 15 (i) the industry of providing child care services; and
- 16 (ii) the industry of providing the following residential care
- 17 services:
- 18 (A) care accommodation or homes for disadvantaged
- 19 people where nursing or medical care is not
- 20 provided as a major service;
- 21 (B) residential corrective services for juvenile
- 22 offenders; and
- 23 (iii) the industry of providing non-residential care welfare
- 24 services industry (including fund-raising services for
- 25 welfare services) not included in other community sector
- 26 industries; and
- 27 (iv) the industry of providing employment placement services
- 28 for disabled people; and

- 1 (v) the industry of providing community service advocacy
2 services; and
- 3 (b) in relation to a reciprocating State—the community sector
4 industry within the meaning of the corresponding law of the
5 State.

6 **2A.4 Court or tribunal—not employer**

7 A court or tribunal is not an employer for the community sector
8 industry.

9 *Note* A covered industry schedule may prescribe a person not to be an
10 employer for the covered industry—see s 7 (3).

11 **2A.5 Years of recognised service—community sector industry**

12 A registered worker for the community sector industry is taken to
13 have completed a year of recognised service for each 365 days of
14 recognised service.

15 **2A.6 Long service leave formula—community sector industry**

16 The following is the *long service leave formula* for the community
17 sector industry:

18
$$W = 0.8667 \times \frac{RS}{365}$$

19 *RS* means the registered worker's number of days recognised
20 service.

21 *W* means the number of weeks long service leave held by the
22 registered worker.

- 1 **2A.7 Amount of leave—community sector industry**
- 2 (1) A registered worker for the community sector industry who has
- 3 5 years or more of recognised service is entitled to the number of
- 4 days of workers long service leave worked out in accordance with
- 5 the long service leave formula for the community sector industry.
- 6 (2) A registered worker for the community sector industry is entitled to
- 7 long service leave for additional days of service worked out in
- 8 accordance with the long service leave formula if the worker—
- 9 (a) becomes entitled to long service leave under this Act; and
- 10 (b) is credited with the additional days in the workers register after
- 11 becoming entitled to long service leave.
- 12 (3) A registered worker for the community sector industry who has
- 13 attained the minimum recognised service through working for a
- 14 registered employer before the commencement day does not accrue
- 15 recognised service for the purposes of the long service leave
- 16 formula if the service was before the commencement day.
- 17 **2A.8 Grant of leave by employers—community sector industry**
- 18 (1) The employer of a registered employee for the community sector
- 19 industry commits an offence if—
- 20 (a) the employee’s long service leave accrues; and
- 21 (b) the employer does not grant the employee the long service
- 22 leave before the end of the prescribed period.
- 23 Maximum penalty: 50 penalty units.
- 24 (2) Long service leave must not be granted for a period of less than
- 25 2 weeks.
- 26 (3) The employer of a registered employee for the community sector
- 27 industry commits an offence if—
- 28 (a) the employer has granted the employee long service leave; and

1 (b) the employer does not give the employee a written statement of
2 the day when the long service leave starts and ends—

3 (i) 2 months before the day when the long service leave
4 starts; or

5 (ii) if the employer and employee agree on a shorter period—
6 before the start of the period agreed.

7 Maximum penalty: 50 penalty units.

8 (4) An offence against this section is a strict liability offence.

9 (5) In this section:

10 *prescribed period*, for long service leave accrued by a registered
11 employee for the community sector industry of an employer,
12 means—

13 (a) 6 months after the day the leave accrues; or

14 (b) if the governing board has allowed, on application by the
15 employer or the employee, a period longer than 6 months—the
16 period allowed by the board; or

17 (c) if the employer and employee agree on a period longer than
18 6 months—the period agreed.

19 **2A.9 Entitlement to payment instead of leave—community**
20 **sector industry**

21 (1) This section applies if a registered worker for the community sector
22 industry has 55 days recognised service and any of the following
23 apply to the worker:

24 (a) the worker has left the industry because of total incapacity;

25 (b) the worker has reached the prescribed retiring age;

26 (c) the worker has died.

- 1 (2) If the governing board is satisfied that this section applies to the
2 worker, the worker is entitled to payment instead of long service
3 leave for the number of weeks long service leave worked out in
4 accordance with the long service leave formula.
- 5 (3) In this section:
6 *prescribed retiring age* means—
7 (a) for a registered worker who has been granted a service pension
8 under the *Veterans' Entitlements Act 1986* (Cwlth), section 38
9 (Eligibility for partner service pension)—the age at which the
10 worker first receives payment of the service pension; or
11 (b) in any other case—55 years.

12 **2A.10 Payments for leave—community sector industry**

- 13 (1) A registered employee for the community sector industry who has
14 been granted long service leave under section 2A.7, or a registered
15 contractor who for the industry is entitled to long service leave, may
16 apply to the authority for payment for the leave.

17 *Note* If a form is approved under s 92 for an application, the form must be
18 used.

- 19 (2) If the governing board is satisfied that the applicant is entitled to
20 long service leave under this Act, the authority must pay to the
21 applicant the amount payable under section 2A.12 (How are leave
22 payments worked out for the community sector industry?).
- 23 (3) The authority must pay an applicant any amount payable under
24 subsection (2) 7 days after the day the applicant becomes entitled to
25 the long service leave if—
26 (a) the application is made 14 days before the applicant becomes
27 entitled to long service leave under this Act; and
28 (b) the applicant asks in the application for the amount to be paid.

1 **2A.11 Payments instead of leave—community sector industry**

2 (1) If a registered worker for the community sector industry is entitled
3 to payment instead of long service leave under this Act, the worker
4 may apply to the authority for the payment.

5 *Note* If a form is approved under s 92 for an application, the form must be
6 used.

7 (2) An application by a registered employee for the community sector
8 industry on the ground that the employee has ceased work in the
9 community sector industry because of total incapacity must be
10 accompanied by a certificate of a doctor certifying that the
11 employee is totally incapacitated for employment in the industry.

12 (3) The governing board may require an applicant mentioned in
13 subsection (2) to submit himself or herself to a medical examination
14 by a doctor chosen by the board for that purpose from a panel of
15 3 doctors nominated by the Australian Capital Territory Branch of
16 the Australian Medical Association.

17 (4) All fees or charges payable for a medical examination under
18 subsection (3) are to be paid by the authority.

19 (5) If an applicant fails, without reasonable excuse, to comply with a
20 requirement under subsection (3), the governing board may refuse
21 the application.

22 (6) If the governing board is satisfied that the applicant is entitled to
23 payment instead of long service leave under this Act, the authority
24 must pay to the applicant the amount payable under section 2A.10.

- 1 **2A.12 How are leave payments worked out for the community**
2 **sector industry?**
- 3 (1) For section 2A.10 (Payments for leave—community sector industry)
4 and section 2A.11 (Payments instead of leave—community sector
5 industry), the amount payable to a registered worker for, or instead
6 of, long service leave is—
- 7 (a) for any part of the entitlement to long service leave accrued as
8 an employee—the amount worked out in accordance with
9 section 2A.13; and
- 10 (b) for any part of the entitlement to long service leave accrued as
11 a contractor—the amount worked out in accordance with
12 section 2A.14.
- 13 (2) For subsection (1)—
- 14 (a) long service leave must be taken in the reverse order in which
15 it accrued; and
- 16 (b) if payment instead of long service leave is being made—the
17 payment is made in relation to the leave in the order in which it
18 accrued.
- 19 **Example**
- 20 Darla has 5 years of service in the community sector industry giving her an
21 entitlement to 4.335 weeks long service leave. She first worked in the industry as
22 a registered employee and accrued 2 weeks of the entitlement in that capacity.
23 Darla then worked as a registered contractor and accrued 2.335 weeks of the
24 entitlement in that capacity.
- 25 Darla decides to take 4.335 weeks long service leave. The payment for the leave
26 is the total of the following amounts:
- 27 • the amount calculated under s 2A.13 where ‘D’ is 842 (ie it took 842 days
28 service as a registered employee to accrue the first 2 weeks of her long
29 service leave entitlement);

- 1 • the amount calculated under s 2A.14 which is the total of the amounts paid to
2 the authority under s 57 for her 983 days work as a registered contractor (ie it
3 took that period of service as a registered contractor to accrue the next
4 2.335 weeks of her long service leave entitlement) and the interest under s
5 2A.14 on those amounts.

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

9 **2A.13 Leave payments for service as registered employee—**
10 **community sector industry**

- 11 (1) For section 2A.12, the amount payable to a registered worker for
12 long service leave for service accrued as a registered employee for
13 the community sector industry is the amount worked out as follows:

$$0.8667 \times \frac{D}{365} \times R$$

14

- 15 (2) In this section:

16 ***D*** means the number of days service credited to the registered
17 worker in the workers register to which the payment relates.

18 ***designated day*** means—

- 19 (a) if the registered worker is taking long service leave—the day
20 the leave begins; and
21 (b) if the registered worker is being paid instead of taking long
22 service leave—the day the payment is made.

23 ***R*** is the highest of the weekly averages of the ordinary remuneration
24 received by the registered worker during each of the following
25 periods that applies to the worker:

- 26 (a) the most recent 2 quarters of service as a registered worker
27 before the designated day;

1 (b) the most recent 4 quarters of service as a registered worker
2 before the designated day;

3 (c) the most recent 20 quarters of service as a registered worker
4 before the designated day.

5 **Example—R**

6 Harry has worked in the community sector industry for 5 years. The periods in
7 par (a), (b) and (c) apply to Harry because he has completed more than
8 20 quarters (or 5 years) relevant service.

9 Harry's average weekly income for the 2 quarters before the designated day is
10 \$283. His weekly averages for the 4 and 20 quarters before the designated day
11 are \$427 and \$375, respectively. Accordingly, *R* is \$427 because it is the highest
12 of the weekly averages.

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

16 **2A.14 Leave payments for service as registered contractor—**
17 **community sector industry**

18 (1) For section 2A.12 (How are leave payments worked out for the
19 community sector industry?), the amount payable to a registered
20 worker for the community sector industry for long service leave for
21 service accrued as a registered contractor is the total of the
22 following for the service:

23 (a) amounts paid by the worker to the authority under section 56
24 (Determination of levy—contractors);

25 (b) interest at the determined rate worked out from the date of
26 receipt of each amount paid under section 56 until the
27 designated day for the leave.

28 (2) The governing board must determine an interim rate of interest from
29 time to time before the determination of the rate under
30 subsection (1).

- 1 (3) The determined rate of interest must—
2 (a) be worked out after the end of each financial year for the
3 previous financial year; and
4 (b) take into account the expenses incurred in administering the
5 authority; and
6 (c) be at least 75% of the rate of interest, expressed as a
7 percentage, earned by the authority worked out as follows:

8
$$\frac{2I}{(FB + FE) - I} \times 100$$

- 9 (4) In this section:

10 ***designated day*** means—

- 11 (a) if the registered worker is taking long service leave—the day
12 the leave begins; and
13 (b) if the registered worker is being paid instead of taking long
14 service leave—the day the payment is made.

15 ***FB*** means the amount of the total equity of the authority at the end
16 of the financial year immediately before the financial year for which
17 the rate is being determined.

18 ***FE*** means the amount of the total equity of the authority at the end
19 of the financial year for which the rate is being determined.

20 ***I*** is the income derived from the investment of the authority's
21 money in the financial year for which the rate is being determined.

22 ***total equity***, in relation to the authority, means the total assets less
23 the total liabilities of the authority worked out from the audited
24 balance sheet of the authority for the relevant financial year.

1 (4) In subsection (2):

2 **D** means the number of days service credited to the registered
3 employee in the workers register and to which the payment relates.

4 **R** is the amount decided by the reciprocal authority as the weekly
5 amount payable to the worker for the service credited to the worker
6 in the State.

7 **2A.17 Service credit—community sector industry—s 64**

8 (1) A registered worker for the community sector industry is to be
9 credited in the workers register with 1 day's service for each day
10 (including a day when the worker does not carry out community
11 sector industry work) in each service period of the worker on or
12 after the worker's registration day.

13 **Example**

14 A day when a worker attends a court in accordance with a summons to serve as a
15 juror or a subpoena to give evidence or produce documents is a day in the
16 worker's period of service when the worker does not carry out community sector
17 industry work.

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

21 (2) However a registered worker in the community sector industry must
22 not, in a financial year, be credited with more than 365 days of
23 service.

24 **2A.18 Records of payments and service—community sector 25 industry**

26 (1) This section applies if the authority—

27 (a) pays an amount to a registered worker for the community
28 sector industry under section 2A.10 (Payments for leave—
29 community sector industry) or section 2A.11 (Payments
30 instead of leave—community sector industry); or

- 1 (b) reimburses a reciprocal authority under section 2A.16
2 (Payments by reciprocal authority on authority's behalf—
3 community sector industry) for an amount paid to a registered
4 worker.
- 5 (2) The authority must delete from the workers register the details
6 relating to the service period for which the worker has been paid.
- 7 (3) However, the authority must keep another record of—
8 (a) the period of the service; and
9 (b) the amount paid to the worker for long service leave or instead
10 of long service leave; and
11 (c) the period of long service leave (if any) granted to or taken by
12 the worker.

13 **2A.19 Public holidays etc not to count as leave—community**
14 **sector industry**

- 15 (1) This section applies if a public holiday or industry holiday falls
16 during a period of long service leave taken by a registered worker
17 for the community industry.
- 18 (2) The period of long service leave is increased by 1 day for each
19 public holiday and industry holiday.
- 20 (3) In this section:
21 *determination* includes a variation, suspension, interpretation or
22 cancellation of a determination.
23 *industry holiday* means a day that is a holiday for people employed
24 in the community sector industry under an award, or a determination
25 or industrial agreement, under the *Workplace Relations Act 1996*
26 (Cwlth).

- 1 **10 Schedule 3, item 18, column 2**
- 2 *substitute*
- 3 sch 1, 1.7 (5) (b), sch 2, 2.7 (5) (b) or sch 2A, 2A.8 (5) (b)
- 4 **11 Schedule 3, item 19, column 2**
- 5 *substitute*
- 6 sch 1, 1.8 (4), sch 2, 2.8 (3) or sch 2A, 2A.9 (2)
- 7 **12 Schedule 3, item 20, column 2**
- 8 *substitute*
- 9 sch 1, 1.9 (2), sch 2, 2.9 (2) or sch 2A, 2A.10 (2)
- 10 **13 Schedule 3, item 21, column 2**
- 11 *substitute*
- 12 sch 1, 1.10 (6), sch 2, 2.10 (6) or sch 2A, 2A.11 (6)
- 13 **14 Schedules 2A and 3 (as amended)**
- 14 *renumber as schedules 3 and 4*
- 15 **15 Dictionary, new definitions of *community sector industry***
- 16 **and *community sector work***
- 17 *insert*
- 18 ***community sector industry***—see schedule 2A, section 2A.3.
- 19 ***community sector work***—see schedule 2A, section 2A.2.

1 **16 Dictionary, definition of *covered industry schedule***

2 *substitute*

3 *covered industry schedule* means—

- 4 (a) for the building and construction industry—schedule 1; and
5 (b) for the contract cleaning industry—schedule 2; and
6 (c) for the community sector industry—schedule 2A.

7 **17 Dictionary, definition of *long service leave formula***

8 *substitute*

9 *long service leave formula*—

- 10 (a) for the building and construction industry—see schedule 1,
11 section 1.5; and
12 (b) for the contract cleaning industry—see schedule 2, section 2.5;
13 and
14 (c) for the community sector industry—see schedule 2A,
15 section 2A.6.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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