

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations)

Long Service Leave (Portable Schemes) Amendment Bill 2011

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(Minister for Industrial Relations)

Long Service Leave (Portable Schemes) Amendment Bill 2011

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 (Portable Schemes) Amendment*
3 *Act 2011*.

4 **2 Commencement**

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

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

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

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

15 **3 Legislation amended**

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

18 **4 Who is an employer?**
19 **Section 7 (3) (e)**

20 *omit*

21 a person

22 *substitute*

23 an entity

1 **5 Who is a *contractor*?**
2 **New section 10 (2)**

3 *insert*

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

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

8 *insert*

9 (1A) The Minister may also declare, for this Act—

- 10 (a) a person not to be an employer for a covered industry; or
11 (b) an individual not to be a contractor for a covered industry; or
12 (c) an individual not to be an employee, or an employee of a stated
13 employer, for a covered industry; or
14 (d) work, or an activity, not to be work in a covered industry.

15 **7 Delegation by authority**
16 **Section 19**

17 *omit*

18 any other

19 *substitute*

20 a

1 **8 Employers registration**
2 **New section 30 (2) to (4)**

3 *insert*

4 (2) The register may be kept in any form, including electronically, that
5 the authority decides.

6 (3) The registrar may correct a mistake, error or omission in the
7 employers register.

8 (4) The registrar may change a detail included in the register to keep the
9 register up-to-date.

10 **9 Dealing with applications after end of 1-month period**
11 **Section 33**

12 *omit*

13 **10 Workers register**
14 **New section 39 (2) to (4)**

15 *insert*

16 (2) The register may be kept in any form, including electronically, that
17 the authority decides.

18 (3) The registrar may correct a mistake, error or omission in the
19 workers register.

20 (4) The registrar may change a detail included in the register to keep the
21 register up-to-date.

1 **11 Application by employers for registration of employee**
2 **Section 41 (2) and note**

3 *substitute*

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

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

9 **12 Sections 47 and 48**

10 *substitute*

11 **47 Service credit—employee’s prior service**

- 12 (1) This section applies in relation to an employee’s service in a
13 covered industry for work done in the industry no earlier than
14 4 years before the employee became a registered worker for the
15 industry.

- 16 (2) The registrar may credit the employee with 1 day’s service in the
17 workers register for the covered industry for each day of the service
18 if the employee’s employer has, in relation to the employee for the
19 day, given the authority—

- 20 (a) a return under section 49 (Quarterly returns by employers) that
21 includes the employee; and
22 (b) payment of the levy under section 51 (Determination of levy—
23 employers) for the return.

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

6 **Example**

7 The registrar is satisfied that Joe, in the 1-year period before his registration day,
8 had separate periods of service as an employee in the contract cleaning industry of
9 25 and 125 days. The registrar may credit Joe in the workers register for the
10 contract cleaning industry with 150 days service.

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

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

17 **48 Service credit—contractor's prior service**

18 (1) This section applies in relation to a contractor's service in a covered
19 industry for work done in the industry not earlier than 1 year before
20 the contractor became a registered contractor for the industry.

21 (2) The registrar may credit the contractor with 1 day's service in the
22 workers register for the covered industry for each day worked—

23 (a) either—

24 (i) for which the contractor gives the board a record of the
25 particulars mentioned in section 58 (1) (Registered
26 contractors to keep records) for the contractor's service;
27 or

28 (ii) if the registrar is satisfied the contractor worked in the
29 covered industry; and

1 (b) for which the contractor has paid the authority the levy
2 determined under section 56 (Determination of levy—
3 contractors).

4 (3) To remove any doubt, a contractor is not entitled to credit for
5 service in a covered industry in relation to work done before the
6 industry became a covered industry.

7 **13 Quarterly returns by employers**
8 **Section 49 (2) (a)**

9 *omit*

10 **14 Section 51**

11 *substitute*

12 **51 Determination of levy—employers**

13 (1) Levy is payable by employers for a covered industry on the ordinary
14 remuneration paid or payable by employers to employees.

15 (2) The Minister may determine the levy payable by employers for a
16 covered industry.

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

20 (3) The governing board must, from time to time, recommend in writing
21 to the Minister the levy that should be payable by employers for a
22 covered industry.

23 (4) Before making a determination, the Minister must have regard to
24 any recommendation made under subsection (3), but need not
25 follow it.

26 (5) A determination is a disallowable instrument.

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

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

3 **15 Civil penalty—fail to give quarterly returns etc**
4 **Section 52 (2)**

- 5 *after*
6 or part of a month,
7 *insert*
8 for a number of consecutive months not exceeding 3 months,

9 **16 Exemption from levy payments—working directors**
10 **Section 53**

- 11 *omit*

12 **17 Quarterly returns by contractors**
13 **Section 54 (2)**

- 14 *after*
15 registered contractor
16 *insert*
17 up to 2 months

18 **18 New section 54 (2A)**

- 19 *insert*
20 (2A) A person is taken not to be registered as a contractor for a covered
21 industry 3 months after the day of the end of a quarter if the person
22 fails to give the authority a return within 3 months after the end of
23 the quarter.

1 **19 Review of ordinary remuneration by governing board**
2 **Section 60 (3) and (4)**

3 *substitute*

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

7 **20 Notice of governing board decisions on review of**
8 **ordinary remuneration**
9 **Section 61 (1)**

10 *omit*

11 7 days

12 *substitute*

13 14 days

14 **21 Removing people from workers register**
15 **Section 65 (4) (c)**

16 *omit*

17 working director or

18 **22 Part 7 heading**

19 *substitute*

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

1 **23 Sections 67 to 69**

2 *substitute*

3 **67 Information for registered workers**

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

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

17 **68 Information for employers**

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

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

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

4 **Example**

5 access or download information from a website

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 **69 Certified copies of long service leave registers**

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

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

15 (2) A person who is given a certified copy under this section may object
16 to the registrar about the accuracy of a matter stated in the copy.

17 (3) An objection must be made in writing within 6 months after the day
18 the certified copy is given to the person objecting.

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

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

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

1 **24 Appointment of inspectors**
2 **Section 71**

3 *omit*
4 director-general
5 *substitute*
6 registrar

7 **25 Identity cards**
8 **Section 72**

9 *omit*
10 director-general
11 *substitute*
12 registrar

13 **26 Definitions—pt 9**
14 **Section 80, new definition of *internally reviewable***
15 ***decision***

16 *insert*
17 *internally reviewable decision*—see section 80A (1).

18 **27 New sections 80A to 80C**

19 *insert*

20 **80A Internal review of certain decisions**

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

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

2 **80B Applications for internal review**

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

13 **80C Internal review**

- 14 (1) The governing board must review an internally reviewable decision,
15 and confirm, vary or revoke the decision, within 5 business days
16 after the governing board receives the application for internal review
17 of the decision.

18 *Note* **Business day**—see the Legislation Act, dictionary, pt 1.

- 19 (2) If the decision is not varied or revoked within the 5-day period, the
20 decision is taken to have been confirmed by the governing board.
21 (3) As soon as practicable after reviewing the decision, the governing
22 board must give written notice of the decision on the internal review
23 to the applicant.

1 **28 Section 82**

2 *substitute*

3 **82 Review of decisions by ACAT**

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

6 (a) an entity mentioned in schedule 4, column 4 in relation to the
7 decision;

8 (b) an entity mentioned in schedule 4, column 4 in relation to the
9 decision if—

10 (i) the original decision was an internally reviewable
11 decision; and

12 (ii) the entity applied to the governing board for review of
13 the decision and the governing board made a decision in
14 relation to the internally reviewable decision;

15 (c) any other person prescribed by regulation.

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

18 **29 Inspection of register**
19 **Section 85**

20 *omit*

21 **30 Benefits under other laws—reimbursement of employer**
22 **Section 89 (2) (b)**

23 *omit*

24 governing board

25 *substitute*

26 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;

1 (b) for a registered worker in the contract cleaning industry—
2 schedule 2, section 2.8;

3 (c) for a registered worker in the community sector industry—
4 schedule 3, section 3.9.

5 **33 Long service leave formula—building and construction**
6 **industry**
7 **Schedule 1, section 1.5, formula**

8 *substitute*

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

9 **34 Amount of leave—building and construction industry**
10 **Schedule 1, section 1.6 (2)**

11 *after*

12 construction industry

13 *insert*

14 who has 10 years or more recognised service

15 **35 Entitlement to payment instead of leave—building and**
16 **construction industry**
17 **Schedule 1, section 1.8 (1)**

18 *omit*

19 5 years

20 *substitute*

21 7 years

-
- 1 **36 Schedule 1, section 1.8 (2)**
- 2 *omit everything before paragraph (a), substitute*
- 3 (2) Also, this section applies to a registered worker for the building and
- 4 construction industry if the worker has 5 years recognised service
- 5 and any of the following apply to the worker:
- 6 **37 Schedule 1, section 1.8 (3)**
- 7 *omit*
- 8 **38 Payment for leave—building and construction industry**
- 9 **Schedule 1, section 1.9 (2)**
- 10 *substitute*
- 11 (2) The authority must pay to the applicant the amount payable under
- 12 section 1.11 (How are leave payments worked out for the building
- 13 and construction industry?) if the registrar is satisfied that—
- 14 (a) the applicant is entitled to long service leave under this Act for
- 15 work done in the building and construction industry; and
- 16 (b) the applicant has been granted leave by the applicant’s
- 17 employer.
- 18 **39 Schedule 1, section 1.9 (3)**
- 19 *omit everything after*
- 20 subsection (2)
- 21 *substitute*
- 22 not later than 21 days after the worker’s application has been made.

- 1 **40 Leave payments for service as registered contractor—**
2 **building and construction industry**
3 **Schedule 1, section 1.13 (3)**
- 4 *substitute*
- 5 (3) The determined rate of interest must be determined at the end of
6 each financial year for the previous financial year, and is—
- 7 (a) if the construction industry scheme funds invested made a
8 return—75% of the rate of the return for the financial year in
9 which the determination is made; or
- 10 (b) if the fund did not make a return or made a loss—nil.

- 11 **41 Amount of leave—contract cleaning industry**
12 **Schedule 2, section 2.6 (1)**
- 13 *omit*
- 14 10 years
- 15 *substitute*
- 16 7 years

- 17 **42 Entitlement to payment instead of leave—contract**
18 **cleaning industry**
19 **Schedule 2, section 2.8 (2)**
- 20 *omit everything before paragraph (a), substitute*
- 21 (2) Also, this section applies to a registered worker for the contract
22 cleaning industry if the worker has 5 years recognised service and
23 any of the following apply to the worker:

1 **43 Payments for leave—contract cleaning industry**
2 **Schedule 2, section 2.9 (2)**

3 *substitute*

4 (2) The authority must pay to the applicant the amount payable under
5 section 2.11 (How are leave payments worked out for the contract
6 cleaning industry?) if the governing board is satisfied that—

7 (a) the applicant is entitled to long service leave under this Act for
8 work done in the contract cleaning industry; and

9 (b) the applicant has been granted leave by the applicant's
10 employer.

11 **44 Schedule 2, section 2.9 (3)**

12 *omit everything after*

13 subsection (2)

14 *substitute*

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

16 **45 Leave payments for service as registered contractor—**
17 **contract cleaning industry**
18 **Schedule 2, section 2.13 (3)**

19 *substitute*

20 (3) The determined rate of interest must be determined at the end of
21 each financial year for the previous financial year, and is—

22 (a) if the contract cleaning scheme industry funds invested made a
23 return—75% of the rate of the return for the financial year in
24 which the determination is made; or

25 (b) if the fund did not make a return or made a loss—nil.

1 **46 Court or tribunal—not employer**
2 **Schedule 3, section 3.4, note**

3 *omit*

4 a person

5 *substitute*

6 an entity

7 **47 Entitlement to payment instead of leave—community**
8 **sector industry**
9 **Schedule 3, section 3.9 (1)**

10 *omit everything before paragraph (a), substitute*

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

14 **48 Payments for leave—community sector industry**
15 **Schedule 3, section 3.10 (2)**

16 *substitute*

17 (2) The authority must pay to the applicant the amount payable under
18 section 3.12 (How are leave payments worked out for the
19 community sector industry?) if the registrar is satisfied that—

20 (a) the applicant is entitled to long service leave under this Act for
21 work done in the community sector industry; and

22 (b) the applicant has been granted leave by the applicant's
23 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
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52 Schedule 4, table, item 11*omit*

1 **53 Schedule 4, table, items 18 to 22**2 *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

1 **54 Dictionary, new definitions**

2 *insert*

3 *apprentice* means an apprentice other than a school-based
4 apprentice.

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

8 **55 Dictionary, definition of *working director*, new note**

9 *insert*

10 *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 2011.

3 Republications of amended laws

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