



Australian Capital Territory

Long Service Leave (Community Sector) Amendment Act 2009

A2009-42

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Long Service Leave (Community Sector) Amendment Act 2009

A2009-42

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 (Community Sector) Amendment Act 2009*.

2 Commencement

This Act commences on 1 July 2010.

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

3 Legislation amended

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

**4 What is a covered industry?
New section 6 (c)**

before the notes, insert

(c) the community sector industry.

5 Section 6, new note 3

insert

Note 3 *Community sector industry*—see sch 2A, s 2A.3.

**6 When is work outside the ACT work?
Section 13 (2), new note 4**

insert

Note 4 *Community sector work*—see sch 2A, s 2A.2.

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

substitute

- (3) However, subsection (2) (b) does not apply if the person would, but for the person ceasing to be registered, have been entitled to payment for the period under—
- (a) schedule 1, section 1.8 (Entitlement to payment instead of leave—building and construction industry); or
 - (b) schedule 2, section 2.8 (Entitlement to payment instead of leave—contract cleaning industry); or
 - (c) schedule 2A, section 2A.9 (Entitlement to payment instead of leave—community sector industry).

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

omit

the contract cleaning industry

substitute

a covered industry

9 New schedule 2A

insert

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

2A.1 Long service leave—community sector industry

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

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

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

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

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

The *community sector industry* is—

- (a) in relation to the ACT—
 - (i) the industry of providing child care services; and
 - (ii) the industry of providing the following residential care services:
 - (A) care accommodation or homes for disadvantaged people where nursing or medical care is not provided as a major service;
 - (B) residential corrective services for juvenile offenders; and
 - (iii) the industry of providing non-residential care welfare services industry (including fund-raising services for welfare services) not included in other community sector industries; and
 - (iv) the industry of providing employment placement services for disabled people; and

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

2A.4 Court or tribunal—not employer

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

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

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

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

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

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

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

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

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

2A.7 Amount of leave—community sector industry

- (1) A registered worker for the community sector industry who has 5 years or more of recognised service is entitled to the number of days of workers long service leave worked out in accordance with the long service leave formula for the community sector industry.
- (2) A registered worker for the community sector industry is entitled to long service leave for additional days of service worked out in accordance with the long service leave formula if the worker—
 - (a) becomes entitled to long service leave under this Act; and
 - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.

2A.8 Grant of leave by employers—community sector industry

- (1) The employer of a registered employee for the community sector industry commits an offence if—
 - (a) the employee's long service leave accrues; and
 - (b) the employer does not grant the employee the long service leave before the end of the prescribed period.

Maximum penalty: 50 penalty units.

- (2) Long service leave must not be granted for a period of less than 2 weeks.
- (3) The employer of a registered employee for the community sector industry commits an offence if—
 - (a) the employer has granted the employee long service leave; and
 - (b) the employer does not give the employee a written statement of the day when the long service leave starts and ends—
 - (i) 2 months before the day when the long service leave starts; or

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

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

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

- (a) 6 months after the day the leave accrues; or
- (b) if the governing board has allowed, on application by the employer or the employee, a period longer than 6 months—the period allowed by the board; or
- (c) if the employer and employee agree on a period longer than 6 months—the period agreed.

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

- (1) This section applies if a registered worker for the community sector industry has 55 days recognised service and any of the following apply to the worker:
 - (a) the worker has left the industry because of total incapacity;
 - (b) the worker has reached the prescribed retiring age;
 - (c) the worker has died.
- (2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the number of weeks long service leave worked out in accordance with the long service leave formula.

- (3) In this section:

prescribed retiring age means—

- (a) for a registered worker who has been granted a service pension under the *Veterans' Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or
- (b) in any other case—55 years.

2A.10 Payments for leave—community sector industry

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

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

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

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

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

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

- (2) An application by a registered employee for the community sector industry on the ground that the employee has ceased work in the community sector industry because of total incapacity must be accompanied by a certificate of a doctor certifying that the employee is totally incapacitated for employment in the industry.
- (3) The governing board may require an applicant mentioned in subsection (2) to submit himself or herself to a medical examination by a doctor chosen by the board for that purpose from a panel of 3 doctors nominated by the Australian Capital Territory Branch of the Australian Medical Association.
- (4) All fees or charges payable for a medical examination under subsection (3) are to be paid by the authority.
- (5) If an applicant fails, without reasonable excuse, to comply with a requirement under subsection (3), the governing board may refuse the application.
- (6) If the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act, the authority must pay to the applicant the amount payable under section 2A.10.

2A.12 How are leave payments worked out for the community sector industry?

- (1) For section 2A.10 (Payments for leave—community sector industry) and section 2A.11 (Payments instead of leave—community sector industry), the amount payable to a registered worker for, or instead of, long service leave is—
 - (a) for any part of the entitlement to long service leave accrued as an employee—the amount worked out in accordance with section 2A.13; and
 - (b) for any part of the entitlement to long service leave accrued as a contractor—the amount worked out in accordance with section 2A.14.
- (2) For subsection (1)—
 - (a) long service leave must be taken in the reverse order in which it accrued; and
 - (b) if payment instead of long service leave is being made—the payment is made in relation to the leave in the order in which it accrued.

Example

Darla has 5 years of service in the community sector industry giving her an entitlement to 4.335 weeks long service leave. She first worked in the industry as a registered employee and accrued 2 weeks of the entitlement in that capacity. Darla then worked as a registered contractor and accrued 2.335 weeks of the entitlement in that capacity.

Darla decides to take 4.335 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 2A.13 where ‘D’ is 842 (ie it took 842 days service as a registered employee to accrue the first 2 weeks of her long service leave entitlement);

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

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).

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

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

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

- (2) In this section:

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

designated day means—

- if the registered worker is taking long service leave—the day the leave begins; and
- if the registered worker is being paid instead of taking long service leave—the day the payment is made.

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

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

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

Example—R

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

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

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).

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

- (1) For section 2A.12 (How are leave payments worked out for the community sector industry?), the amount payable to a registered worker for the community sector industry for long service leave for service accrued as a registered contractor is the total of the following for the service:
 - (a) amounts paid by the worker to the authority under section 56 (Determination of levy—contractors);
 - (b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.
- (2) The governing board must determine an interim rate of interest from time to time before the determination of the rate under subsection (1).

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

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

- (4) In this section:

designated day means—

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

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

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

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

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

2A.15 Payments by authority on reciprocal authority's behalf—community sector industry

- (1) This section applies to a registered worker for the community sector industry who has a long service leave entitlement under this Act and a corresponding law.
- (2) The worker may apply to the authority for payment of a long service leave entitlement worked out in accordance with the corresponding law.

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

- (3) The authority must pay the worker the amount of the entitlement worked out in the way stated in the corresponding law if the authority is authorised by the reciprocal authority to make the payment.

2A.16 Payments by reciprocal authority on authority's behalf—community sector industry

- (1) This section applies if, under a corresponding law, a reciprocal authority pays to a person an amount that, but for the payment, would have been payable for a long service leave entitlement under this Act for work done in the contract cleaning industry.
- (2) If the authority is notified about the payment and is satisfied the payment was properly made, the authority must reimburse the reciprocal authority the amount worked out as follows:

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

- (3) If the authority makes a reimbursement under subsection (2), the obligation of the authority to make the payment to the person for the entitlement is discharged.

- (4) In subsection (2):

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

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

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

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

Example

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

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).

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

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

- (1) This section applies if the authority—
- (a) pays an amount to a registered worker for the community sector industry under section 2A.10 (Payments for leave—community sector industry) or section 2A.11 (Payments instead of leave—community sector industry); or

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

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

- (1) This section applies if a public holiday or industry holiday falls during a period of long service leave taken by a registered worker for the community industry.
- (2) The period of long service leave is increased by 1 day for each public holiday and industry holiday.
- (3) In this section:

determination includes a variation, suspension, interpretation or cancellation of a determination.

industry holiday means a day that is a holiday for people employed in the community sector industry under an award, or a determination or industrial agreement, under the *Workplace Relations Act 1996* (Cwlth).

10 Schedule 3, item 18, column 2

substitute

sch 1, 1.7 (5) (b), sch 2, 2.7 (5) (b) or sch 2A, 2A.8 (5) (b)

11 Schedule 3, item 19, column 2

substitute

sch 1, 1.8 (4), sch 2, 2.8 (3) or sch 2A, 2A.9 (2)

12 Schedule 3, item 20, column 2

substitute

sch 1, 1.9 (2), sch 2, 2.9 (2) or sch 2A, 2A.10 (2)

13 Schedule 3, item 21, column 2

substitute

sch 1, 1.10 (6), sch 2, 2.10 (6) or sch 2A, 2A.11 (6)

14 Schedules 2A and 3 (as amended)

renumber as schedules 3 and 4

15 Dictionary, new definitions of *community sector industry* and *community sector work*

insert

community sector industry—see schedule 2A, section 2A.3.

community sector work—see schedule 2A, section 2A.2.

16 Dictionary, definition of *covered industry schedule*

substitute

covered industry schedule means—

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

17 Dictionary, definition of *long service leave formula*

substitute

long service leave formula—

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 September 2009.

2 Notification

Notified under the Legislation Act on 23 November 2009.

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 (Community Sector) Amendment Bill 2009, which was passed by the Legislative Assembly on 12 November 2009.

Clerk of the Legislative Assembly

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