

EXPOSURE DRAFT

Minister for Industrial Relations

(Prepared by Parliamentary Counsel's Office)

Long Service Leave (Portable Schemes) (Security Industry) Amendment Bill 2011

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 What is a <i>covered industry</i> ? New section 6 (d)	2
5 Section 6, new note	2
6 When is work outside the ACT <i>work</i> ? Section 13 (2), new note	2
7 New schedule 3A	3

Contents

		Page
8	Schedule 4, items 20 to 23	15
9	Schedules 3A and 4 (as amended)	15
10	Dictionary, definition of <i>covered industry schedule</i> , new paragraph (d)	16
11	Dictionary, definition of <i>long service leave formula</i> , new paragraph (d)	16
12	Dictionary, new definitions of <i>security industry</i> and <i>security work</i>	16

EXPOSURE DRAFT

EXPOSURE DRAFT

Minister for Industrial Relations

(Prepared by Parliamentary Counsel's Office)

Long Service Leave (Portable Schemes) (Security Industry) 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 Name of Act

This Act is the *Long Service Leave (Portable Schemes) (Security Industry) Amendment Act 2011*.

2 Commencement

This Act commences on 1 July 2012.

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 (d)**

insert

(d) the security industry.

5 Section 6, new note

insert

Note 4 *Security industry*—see sch 3A, s 3A.3.

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

insert

Note 5 *Security work*—see sch 3A, s 3A.2.

7 New schedule 3A*insert***Schedule 3A Long service leave payments—
security industry**

(see s 6)

3A.1 Long service leave—security industry

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

3A.2 What is *security work*?

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

3A.3 What is the *security industry*?

- (1) The *security industry* is—
 - (a) in relation to the ACT—the industry in which security activities are undertaken by people licensed to undertake the activities under the *Security Industry Act 2003*; and

EXPOSURE DRAFT

(b) in relation to a reciprocating State—the security industry within the meaning of the corresponding law of the State.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) In this section—

security activity—see the *Security Industry Act 2003*, dictionary.

3A.4 Court or tribunal—not employer

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

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

3A.5 Years of recognised service—security industry

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

3A.6 Long service leave formula—security industry

The following is the *long service leave formula* for the security 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 worker.

3A.7 Amount of leave—security industry

- (1) A registered worker for the security industry who has 7 years or more 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 security industry.
- (2) A registered worker for the security industry is entitled to additional long service leave worked out in accordance with the long service leave formula for the security industry if the worker—
 - (a) becomes entitled to long service leave under this Act for work done in the industry; and
 - (b) is credited with the additional days in the workers register after becoming entitled to long service leave.

3A.8 Grant of leave by employers—security industry

- (1) The employer of a registered employee for the security 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 security 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) not later than 2 months after 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 security 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 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.

3A.9 Entitlement to payment instead of leave—security industry

- (1) This section applies if a registered worker for the security industry has 5 years 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 amount of long service leave worked out in accordance with the long service leave formula.
- (3) In this section:
prescribed retiring age—
 - (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.

3A.10 Payments for leave—security industry

- (1) A registered employee for the security industry who has been granted long service leave under section 3A.7, or a registered contractor for the industry who 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 this provision, the form must be used.

- (2) The authority must pay to the applicant the amount payable under section 3A.12 (How are payments worked out for the security industry?) if the registrar is satisfied that—
 - (a) the applicant is entitled to long service leave under this Act for work done in the security industry; and
 - (b) the applicant has been granted leave by the applicant's employer.

EXPOSURE DRAFT

- (3) The authority must pay an applicant any amount payable under subsection (2) not later than 21 days after the worker's application has been made.

3A.11 Payment instead of leave—security industry

- (1) If a registered worker for the security 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 this provision, the form must be used.

- (2) An application by a registered employee for the security industry on the ground that the employee has ceased work in the security 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 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 3A.12.

3A.12 How are payments worked out for the security industry?

- (1) For section 3A.10 and section 3A.11, 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 3A.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 3A.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

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

Trevor 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 3A.13 where 'D' is 842 (ie it took 842 days service as a registered employee to accrue the first 2 weeks of his long service leave entitlement);

EXPOSURE DRAFT

- the amount calculated under s 3A.14 which is the total of the amounts paid to the authority under s 56 for his 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 his long service leave entitlement) and the interest under s 3A.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).

3A.13 Leave payments for service as registered employee—security industry

- (1) For section 3A.12, the amount payable to a registered worker for long service leave for service accrued as a registered employee for the security 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—

- (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.

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:

- (a) 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 security 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).

3A.14 Leave payments for service as registered contractor—security industry

- (1) For section 3A.12 (How are payments worked out for the security industry?), the amount payable to a registered worker for the security 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).

EXPOSURE DRAFT

- (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 security 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.

3A.15 Payments by authority on reciprocal authority’s behalf—security industry

- (1) This section applies to a registered worker for the security 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.

3A.16 Payments by reciprocal authority on authority’s behalf—security 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 security 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 person in the workers register for service as an employee and to which the payment relates.

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

3A.17 Service credit—security industry—s 64

- (1) A registered worker for the security 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 security 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 security 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).

EXPOSURE DRAFT

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

3A.18 Records of payments and service—security industry

- (1) This section applies if the authority—
 - (a) pays an amount to a registered worker for the security industry under section 3A.10 (Payments for leave—security industry) or section 3A.11 (Payment instead of leave—security industry); or
 - (b) reimburses a reciprocal authority under section 3A.16 (Payments by reciprocal authority on authority’s behalf—security industry) for an amount paid to a registered worker for the industry.
- (2) The authority must delete from the workers register the details relating to the period of service for which the worker has been paid.
- (3) However, the authority must keep another record of—
 - (a) the period of 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.

3A.19 Public holidays not to count as leave—security industry

- (1) This section applies if a public holiday falls during a period of long service leave taken by a registered employee for the security industry.
- (2) The period of long service leave is increased by 1 day for each public holiday.

8 Schedule 4, items 20 to 23*substitute*

20	sch 1, 1.7 (5) (b), sch 2, 2.7 (5) (b), sch 3, 3.8 (5) (b) or sch 3A, 3A.8 (5)	refuse to allow additional period	applicant	governing board
21	sch 1, 1.8 (4), sch 2, 2.8 (3), sch 3, 3.9 (2), or sch 3A, 3A.9 (2)	not satisfied that section applies to applicant	applicant	governing board
22	sch 1, 1.9 (2), sch 2, 2.9 (2), sch 3, 3.10 (2) or sch 3A, 3A.10 (2) (a)	not satisfied that applicant entitled to long service leave	applicant	governing board
23	sch 1, 1.10 (6), sch 2, 2.10 (6), sch 3, 3.11 (6) or sch 3A, 3A.11 (6)	not satisfied that applicant entitled to payment instead of long service leave	applicant	governing board

9 Schedules 3A and 4 (as amended)*renumber as schedules 4 and 5***EXPOSURE DRAFT**

10 Dictionary, definition of *covered industry schedule*, new paragraph (d)

insert

(d) for the security industry—schedule 3A.

11 Dictionary, definition of *long service leave formula*, new paragraph (d)

insert

(d) for the security industry—see schedule 3A, section 3A.6.

12 Dictionary, new definitions of *security industry* and *security work*

insert

security industry—see schedule 3A, section 3A.3.

security work—see schedule 3A, section 3A.2.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 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.

EXPOSURE DRAFT