2026

Legislative Assembly for the
Australian Capital Territory

Long Service Leave (Portable Schemes) Amendment Bill 2026

Revised Explanatory Statement

Presented by

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

AMENDMENTS TO LONG SERVICE LEAVE (PORTABLE SCHEMES) ACT 2009

This explanatory statement relates to the bill as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose

The Long Service Leave (Portable Schemes) Amendment Bill 2026 makes a targeted amendment to the Long Service Leave (Portable Schemes) Act 2009 to temporarily exclude employers in the accommodation and food services industries from being treated as employers for the services industry under the portable long service leave scheme.

The purpose of the Bill is to ensure that any application of the portable long service leave scheme to these industries occurs only after proper independent review and with appropriate scrutiny by the Legislative Assembly. The Bill recognises the particular pressures faced by accommodation and food services businesses, including small and family-run businesses, and seeks to ensure that any expansion of the scheme does not proceed without evidence that it is unlikely to cause material adverse effects on business viability or employment in the ACT.

The Bill does not permanently remove these industries from the portable long service leave framework. Rather, it creates a temporary exclusion until a day fixed by the Minister by disallowable instrument. The Minister must not fix that day before 1 July 2027 and may only do so after an independent review has been conducted and tabled in the Legislative Assembly, together with a statement of reasons, at least nine sitting days before the instrument is signed.

Clause Notes

Clause 4 – Insert New Section 13A–Temporary exclusion—accommodation and food services industries

Clause 4 inserts new section 13A into the *Long Service Leave (Portable Schemes) Act* 2009.

New section 13A(1) provides that, despite the Act, an employer in the hairdressing, accommodation and food services industry is not an employer for the services industry. This creates a temporary exclusion for employers in those industries from the application of the portable long service leave scheme as it applies to the services industry.

New section 13A(2) provides that the exclusion applies until a day fixed by the Minister by disallowable instrument. This ensures that the exclusion can only be lifted through an instrument subject to Assembly scrutiny and disallowance.

New section 13A(3) provides that the Minister must not fix a day before 1 July 2027.

New section 13A(4) provides that the Minister may only fix a day for the industry to be brought within the portable long service leave scheme after an independent review has been conducted. The review must be undertaken by an appropriate independent party who has not, in the previous five years, been an ACT Government employee or office holder, or an officer or employee of a registered organisation under the *Fair Work (Registered Organisations) Act* 2009 (Cth) or a relevant peak

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industry body. This ensures the decision is based on independent, balanced and credible advice, rather than advice from government or organisations with a direct institutional interest in the outcome.

New section 13A(5) requires that the review must find that applying the Act to the industry is unlikely to cause material adverse effects on business viability or employment in the ACT. This requirement is intended to ensure that any decision to apply the scheme to these industries is based on evidence rather than assumption, and that the economic consequences for affected businesses and workers are properly considered.

New section 13A(6) requires the Minister to table the review and a statement of reasons in the Legislative Assembly at least nine sitting days before signing the disallowable instrument. This provides the Assembly with an opportunity to consider the review and scrutinise the Minister's reasons before the exclusion is lifted.

New section 13A(6) provides that a day may be fixed separately for each industry. This allows the Minister to treat the hairdressing industry, accommodation industry and the food services industry separately, recognising that the circumstances, cost pressures and employment conditions in each industry may differ.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the bill, due regard was given to its compatibility with the rights set out in the Human Rights Act 2004 (the HR Act). The bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the HR Act.

Rights engaged `

The Bill may engage rights relating to work and equality to a limited extent, insofar as it temporarily delays the application of a statutory portable long service leave entitlement to workers in the accommodation and food services industries.

However, the Bill does not remove existing long service leave entitlements. It creates a temporary exclusion from the portable scheme while requiring an independent review of the likely impacts on business viability and employment before the scheme may be applied to these industries. The Bill also preserves Assembly scrutiny by requiring the relevant review and statement of reasons to be tabled before the Minister signs the disallowable instrument.

To the extent that any human rights are engaged, the limitation is reasonable, proportionate and directed to a legitimate purpose. The Bill seeks to ensure that the scheme is not extended to vulnerable industries without adequate evidence, independent assessment and parliamentary oversight.

The Bill is consistent with section 28 of the Human Rights Act 2004. Any limitation on rights is reasonable and demonstrably justified in a free and democratic society, having regard to the limited and temporary nature of the exclusion, its legitimate purpose of protecting business viability and employment, the preservation of existing long service leave entitlements, and the safeguards of independent review..

The Bill is therefore compatible with the Human Rights Act 2004.

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