

Workforce mobility and factors for consideration

In 2020 the Australian Bureau of Statistics released a report into job mobility which indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020⁹ Our analysis shows us that mobility remained highest for professionals, at 21.7% with technicians and trades, clerical and administrative and sales workers reporting a moderate level of mobility in comparison.¹⁰ Across industries, hospitality workers were identified as the most likely to change jobs in 2020, with 14.3% changing their employer or business; followed by workers in rental and real estate 11.4%; administrative services 10.5%; and Retail Trade 9.3%.

The ABS report showed high job mobility rates among community and personal service workers noting that almost 10 per cent of workers had changed employers in the reporting year. Given that seven years is the usual qualifying period for workers to access long service leave in the Territory, this trend indicates that many workers may not stay in continuous employment with the same employer long enough to access long service leave entitlements, resulting in fewer workers being eligible to access long service leave entitlements. However, the reasons for job mobility may be varied and not entirely attributed to the individual's decision.

The material shows us that high mobility industries have a higher ratio of young people who may experience particular influencing factors that impact their ability to remain with a single employer – such as family and caring responsibilities, study and professional development opportunities and the inherent transient nature of business within these industries themselves.

In many cases these industries also include a higher number of women than other industries. When we examine the trends around women in the workforce, we see that women across careers tend to move in and out of the workforce for a number of reasons.

Women under the age of 35 represent over 55% in industries in retail, accommodation and food services, while women over 45 account for almost 60% of those employed in these industries, with over 60% employed in these industries once they reach 55 years of age.

The labour force participation rate for people with children under five is 65.5% for women compared with 94.4% for men, with women representing over 50% of workers in administrative and accommodation and food services, over 70% employees in clerical and administration, almost 60% in retail sales, and over 70% in community and personal services, compared with less than 40% as managers.¹¹ This could imply that women are exiting the workforce to care for children, often leaving before accruing the required service period for long service leave and, then return to the workforce often in the same industry, without the ability to revive their previous service history.

⁹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

¹⁰ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

¹¹ <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#data-download>

In 2020, women were also more likely to continue to work as they got older compared with earlier years. For example, the employment-to-population ratio for 65 year old women in 2020 (35.6%) was more than three times higher than similar aged women in previous years (less than 7% in 1980, and around 10% in 1966 and 2000).¹²

- Drawing on this data, we have identified five industries that align with the Portable Schemes principles and demonstrate insecure employment characteristics for possible inclusion within the LSL Portable Schemes, these are: personal and other services (which includes hairdressing and beauty services);
- accommodation and food services (which includes contract catering);
- rental, hiring and real estate services;
- administrative and support services (which includes travel agency services and general administrative support services including labour hire); and
- retail trade¹³.

To allow us to identify the workers within each of the identified industries we have explored the use of the Australian and New Zealand Standard Industrial Classification (ANZSIC) as the preferred classification system.

The ANZSIC is the standard classification system used in Australia and New Zealand to collect, compile and publish information about the operation of industries. It enables information about businesses, including employee data, to be grouped by reference to their industry and supports comparisons between industries.

ANZSIC is a hierarchical classification system with four levels, namely Divisions (the broadest level), Subdivisions, Groups and Classes (the finest level). At the Divisional level, the main purpose is to provide a limited number of categories which provide a broad overall picture of the economy and are suitable for the publication of summary tables in official statistics. The Subdivision, Group and Class levels provide increasingly detailed dissections of these categories for the compilation of more specific and detailed statistics.

One of the challenges with the ANZSIC is that we will not always be able to rely on the highest level of classification – as such we have assessed relevant classes within each subdivision and division to determine the highest level that should be captured by the expansion proposal, without placing unnecessary regulation on industries that do not meet the principles of the LSL Portable Schemes. This work is discussed further in greater detail below as we identify each of the proposed industries for expansion.

Using the ANZSIC as the basis for describing who will be covered by our proposed expansion of the LSL Portable Schemes enables us easily to communicate with industry which industry and in turn which workers, will be covered.

¹² <https://www.abs.gov.au/articles/changing-female-employment-over-time#:~:text=Women%20made%20up%20almost%20half,when%20women%20usually%20have%20children>

¹³

Personal and Other Services (incorporating hairdressing and beauty services)

Division S Personal and Other Services (with exclusions)

When we assessed the breadth of activities and occupations at the Division, Sub-Division, Group and Class level for Personal and Other Services, which include hairdressing and beauty services, we considered expansion at the Divisional level with some exclusions would maximise the benefits of the Schemes, align with the core principles of the LSL Portable Schemes Act and minimise the risk of inadvertently capturing workers who are not vulnerable to losing access to long service leave entitlements.

For the purposes of this consultation, we propose to define the workers for the purpose of inclusion within the LSL Portable Schemes as those identified by ANZSIC Division S, with some exclusions.

We are conscious that at the Division level there are a range of services that are unlikely to meet the principles of the Portable Schemes – this includes a broad range of personal services including religious, civic, professional and other interest group services; selected repair and maintenance activities; and private households employing staff. As such, it is not our intention to include these workers within the proposal.

Commented [YM1]: I think I have already suggested much of this section be deleted – but I note the introduction that lists the industries of interest refers to hair and beauty – this whole section presupposes our interest is personal services sector – readers won't get why we are writing half a page on excluding household staff. I understand its because of where they sit in the ANZSIC structure – but its tail wagging the dog even if they manage to appreciate the relationship.

Commented [A2R2]: our concern is that if we do not discuss the exclusions, are we misleading the relevant industries?

Accommodation and Food Services (incorporating contract catering)

Division H: Accommodation and Food Services (with exclusions)

When we looked at expanding the Portable Schemes to the contract catering industry, we noted that occupations within the Accommodation and Food Services Division (Division H of ANZSIC) are similar across the broader Divisional level, in that they have common characteristics and perform similar functions.

The Accommodation and Food Services Division includes workers mainly engaged in:

- providing short-term accommodation for visitors;
- providing food and beverage preparation services; and
- serving of meals and beverages for consumption by customers.

As such we consider it viable to take advantage of the division classification based on the likelihood of worker mobility across occupations making up the division. It is also our view that employees in occupations within the Accommodation and Food Services Division may cease employment with one employer due to reasons beyond their control, such as due to the closure of businesses, but seek to remain within the industry itself.

To limit the expansion of the LSL Portable Schemes only to Contract Catering Services would mean the expansion would only capture a small number of businesses and workers, including a majority of small businesses that may operate alongside workers performing the same services within the same employer; this could increase the inherent disadvantage facing some workers in the Food Services industry who would otherwise seek to remain within the industry.

Commented [A3]: Yes, please confirm – as below question

As such, we are of the view that Division H with some exceptions would appropriately capture workers who should be considered for coverage, based on alignment with the principles (gender balance/mobility etc). This means workers within those industries will be entitled to long service leave entitlements under the expansion proposal.

It is our intention to expand the Portable Schemes to Division H¹⁴ to capture:

There are no proposed exclusions for worker classes under Division H.

Commented [A4]: Hi Leo, can you please confirm if there are exclusions to Division H or not – I am confused – you've indicated at footnote 13 there are exclusions. If this is the case, can you please amend the statement 'It is our intention to expand ...to Division H with some exceptions being xxx'.

Rental, Hiring and Real Estate Services

Division L: Rental, Hiring And Real Estate Services (no exclusions)

The Rental, Hiring and Real Estate Services Division includes workers mainly engaged in renting, hiring, or otherwise allowing the use of tangible or intangible assets, and workers providing related services.

Similar to the hairdressing and beauty services industry, workers within the rental and real estate industries sit within a broader Division under ANSZIC.

In considering the expansion of the Portable Schemes to this sector, we are considering expansion to the Division level. This is on the basis that occupations that make up the division have similar primary activities and rates of mobility across the industry. Expansion of the schemes to include (Division L: Rental, Hiring And Real Estate Services) would support attraction, retention and provide leave entitlements to workers who may otherwise miss out.

Administrative and Support Services

Division N - Administrative and Support Services (with exclusions)

The Administrative and Support Services Division includes workers mainly engaged in performing routine support activities for the day-to-day operations of other businesses or organisations.

The activities undertaken by workers in this division are often integral parts of the activities found in all sectors of the economy. Recent trends have moved more towards the outsourcing of such non-core activities. The workers classified in this division specialise in one or more of these activities and can, therefore, provide services to a variety of clients.

Expansion of the LSL Portable Schemes to Division N - Administrative and Support Services, would provide access to entitlements for a cohort that may be disadvantaged, in that they are not able to access leave entitlements because they do not achieve the necessary amount of service with a single employer before changing jobs to secure better work conditions.

The occupations proposed for inclusion in this industry may undertake work in industries currently covered under the LSL Portable Schemes, but be excluded under the current provisions.

¹⁴ Excluded from this division are gambling institutions (casinos); amusement and recreation parks; long term (residential) caravan parks; theatre restaurants; sporting clubs; and other recreation or entertainment facilities providing food, beverage, and accommodation services

In assessing Division N – Administrative and Support Services against the principles of the Portable Schemes, and considering mobility data, we do not intend on expanding coverage to the to building cleaning, pest control or packages services, as it is our view that the primary activities for these occupations and workers, do not represent the same levels of mobility targeted by this review.

Retail Trade

Division G: Retail Trade (with exclusions)

The Retail Trade Division includes workers mainly engaged in the purchase and/or on selling, the commission-based buying, and the commission-based selling of goods, without significant transformation, to the general public. The Retail Trade Division also includes workers that purchase and on-sell goods to the general public using non-traditional means, including the internet.

Noting that the majority of workers within retail trade meet the principles of the Portable Schemes, and have a relatively high degree of mobility we propose to include the Division G with minimal exclusions.

We propose to exclude non-store retailing and retail commission-based buying classes from our expansion proposal on the basis that our understanding is that these workers do not experience similar instances of mobility or vulnerability as shown in the other classes.

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 12/05/2022 3:59 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments
Attachments: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments.docx

OFFICIAL

Hi Rebecca

Thank you for making some time to discuss the comments earlier. I have made adjustments in line with Michael's comments and responded to comments on pages 11 and 23.

If you have any concerns or would like me to make further adjustments, please let me know.

Kind regards

Teo

PART 1 - INTRODUCTION

The ACT Government is committed to improving working conditions for all Canberrans, including supporting workers' access to portable long service leave in industries with high rates of insecure employment or employee mobility.

Portable Long Service Leave is a type of leave given to an employee who has worked in the same industry for a specific amount of time.

The portable schemes allow for employees to transfer from employer to employer without losing the service already accrued within the covered industry. In the ACT workers in the building and construction, contract cleaning, community sector, and security industries are covered by the portable schemes.

Long service leave enables employees to recover their energies and return to work renewed, refreshed, and reinvigorated, after long periods of service. There are many well recognised positive impacts to supporting long service leave for employers and employees, including improved employee health and wellbeing, which in turn contributes to improved productivity.

In recognition of this, the Government has initiated review of long service leave coverage under the *Long Service Leave (Portable Schemes) Act 2009*, with a view to identifying occupations or industry sectors that should be provided access to portable long service leave.

The Government is seeking your views about the possible expansion of the Portable Schemes and welcomes comments from stakeholders including workers, unions, employers and peak bodies.

Purpose

The purpose of this consultation is:

1. To consult on the proposed expansion of the Long Service Leave Portable Schemes, with particular consideration to the following industries:
 - hairdressing and beauty services; industry
 - hospitality (includes contract catering) industry;
 - rental and real estate industry;
 - administrative services; industry
 - retail trade industry;
 - professional service industry
2. ~~To seek views about our planned approach in defining new industries, with particular consideration of our proposal to use the Australian and New Zealand Standard Industrial Classification (ANZSIC) classification system to describe what worker classifications/classes are included for the purposes of the Long Service Leave Portable Schemes; and~~

Commented [YM1]: Add a sentence between these two paras summarising what portable long service does ie allows people to port LSL credits between employers provided they remain employed within the same industry sector and it covers construction, cleaning security and comms servs

Commented [EL2]: Given the assembly motion about contract catering, we need to draw this out better in the consultation paper – please add here to make it clear the hospitality industry would include contract catering

Commented [EL3]: Suggest deleting this, we just want to seek stakeholders views about expansion, the definitions are something that we can work with the LSLA on to ensure clarity when drafting the changes – it requires a lot of technical background material that would be difficult for most readers to engage with

3.2. To consider broader issues associated with the Long Service Leave (Portable Schemes) Act 2009, including identifying possible longer-term reforms to further improve access to the Portable Schemes.

How can I be involved?

Making a submission

This consultation paper seeks views on expanding the Long Service Leave (Portable Schemes) Act 2009 to industries such as the hairdressing and contract catering.

The consultation period will close on xx May 2022. If you would like to make a submission, your submission can be emailed to wsir@act.gov.au. Written submissions are invited by XX June 2022 and should be emailed to wsir@act.gov.au.

We will not respond directly to your submission; however, we will use it to inform our reform approach and include it in our What We Heard report – we will deidentify submissions where appropriate in any future public consultation.

PART 2 - BACKGROUND

Increased mobility in employment has meant that long service leave in its traditional form has become inaccessible to many workers. In 2009, the ACT Government recognised that many Canberrans were disadvantaged by traditional views about eligibility to long service leave and established the Portable Schemes in recognition of this disadvantage.

Australians are working longer hours than ever before¹. While Australia ranks first in the OECD's "Better Life Index", it ranks 29th out of 36 countries in work/life balance. This is primarily because over 14 per cent of employed Australians work 50 or more hours per week compared to the OECD average of 9 per cent.² It is important that employee health be supported by the provision of leave to ensure adequate rest and respite.

Workforce mobility is high with almost one in five workers employed by their current employer for less than one year.³ This has led to a relatively low prevalence of long-term employment relationships, with around three in four workers working with their employer for less than 10 years (the usual qualifying period for long service leave). This structural trend away from long-term employment is limiting access to long service leave for a large portion of the workforce.

¹ The Mckell Institute, *The Case for a National Portable Long Service Leave Scheme in Australia* (2013, Macquarie University), available at:

https://www.mq.edu.au/_data/assets/pdf_file/0004/65875/Mckell_Portable_LongService_1.pdf > at 10.

² Professor Raymond Markey et al, *The Desirability of Extending Portable Long Service Leave: Submission to the Economic, Education, Jobs and Skills Committee, Parliament of Victoria* (2015), available at:

http://www.parliament.vic.gov.au/images/EJSCCommittee/Sub_19_07082015_Centre_for_Workforce_Futures_Macquarie_University.pdf > at 21.

³ Australian Bureau of Statistics, *Labour Mobility*, Cat. 6209.0 (2012).

Commented [EL4]: This is quite broad, in terms of the question about expansion which is the key purpose of the consultation paper, I suggest the purpose be split into:

1. To consult on expansion to:
 - a. Hairdressing; and
 - b. Contract catering.
2. To consult on expansion to other industries [eg the other 4/5 industries identified]

Commented [YM5]: My further comments will elaborate, but I think delete these two points and add a sentence to pose the question please identify ACT occupations or industry sectors that should, in your view, have access to portable long service leave?

Commented [YM6]: Duplicates the purpose section – maybe replace with a more straight forward written submissions are invited by xxdatexx and should be emailed to xxx.

Then do the standard submissions may be published please mark as confidential if you do not wish publication etc.

Commented [EL7]: Suggest the second week June 2022 here

Commented [YM8]: Delete – and I think we should do a standard email reply, acknowledging receipt of submissions and thanking

Commented [YM9]: Traditional views isn't quite right – it was the employer specific eligibility

This limitation is particularly pronounced for women. This is because traditionally, women disproportionately take on carer's responsibilities,⁴ and subsequently report work/life conflict significantly more than men.⁵ Women who have children are also more likely to take extended (unpaid) breaks from employment,⁶ which hinders accumulation of traditional long service leave benefits.

Portable long service leave was introduced to mitigate these inequalities by allowing workers to move between employers in a covered industry without losing credit for time worked in that industry.

By recognising and encouraging loyalty and professional development within these industries, the schemes benefit employees by facilitating sustainable career paths while providing a variety of work opportunities. The schemes in turn benefit employers and consumers by encouraging the retention of skilled workers within the industry.

Commented [YM10]: These three paras are good – evidence based and linked to policy view – I would be inclined to delete the first two and start the section with these. Also there is some duplication with first two paras

Commented [YM11]: Structure of sentence issue – the schemes provide a variety of work opportunities doesn't quite fit

Broadly speaking, access to long service leave in the Territory is established by either:

- the *Long Service Leave Act 1976* (1976 LSL Act), which provides for the traditional single employer model, or
- the *Long Service Leave (Portable Schemes) Act 2009* (LSL Portable Schemes Act), which maintains leave provisions within more mobile industries.

Long Service Leave Act 1976

Under the 1976 LSL Act an employee is entitled to long service leave after completing seven years' service with a single employer, for the period of the service; an employee accrues long service leave at the rate of 1/5 of a month's leave for each year of service².

$$\frac{(1/5 \times \text{The amount of continuous service in years}) \times 52}{12} = \text{Amount of leave in weeks}$$

For full-time employees, payment for long service leave is made at the rate of an amount equivalent to the ordinary remuneration the employee would have received in respect of the period of leave if they had not taken the leave.

$$\text{Ordinary remuneration} \times \text{weeks entitlement} = \text{Amount of long service leave}$$

Example: \$560.00 (ordinary remuneration) x 6.0667 (weeks entitlement for seven years) = \$3,397.35

⁴ Tanya Carney, 'The Employment Disadvantage of Mothers: Evidence for Systemic Discrimination' (2009) *Journal of Industrial Relations* 51(1), 113-130.

⁵ Natalie Skinner et al, *The Big Squeeze: Work, home and care in 2012* (2012); Centre for Work and Life, *Australian Work and Life Index 2012* (University of South Australia, Adelaide).

⁶ Above n 4.

² The *Long Service Act 1976* (the 1976 LSL Act) covers employees in the ACT who are not covered by an award or agreement or where an award or agreement does not contain provisions for long service leave. Full-time and part-time employees are included in this coverage.

An employer is required to retain a contingent liability over the duration of the employment for all employees, to ensure adequate funds are available to pay employees' long service leave entitlements on completion of the required service period. There is, however, no regular levy paid under the 1976 LSL Act, and it is up to the employer to administer and ensure funds are available.

In contrast, the LSL Portable Schemes Act allows workers who choose to remain in defined industries to accrue long service leave entitlements through continuous industry service, rather than through service with one employer. Workers who are not hired on an ongoing basis or change jobs out of defined industries may be unable to qualify for long service leave.

Long Service Leave (Portable Schemes) Act 2009 (ACT)

The Long Service Leave Portable Schemes (Portable Schemes) support long service leave entitlements to be accumulated on an employee's length of service in a particular industry, rather than their length of service with a single employer. The portable schemes allow for employees to transfer from employer to employer (to 'port' their entitlements) without losing the service already accrued within the covered industry.

The LSL Portable Schemes Act currently supports designated workers within four defined industries known as Covered Industries:

- building and construction,
- contract cleaning,
- community sector, and
- security.

In the ACT, employers that have employees covered under the Portable Schemes must register with the Long Service Leave Authority and pay a levy contribution to the Authority of the gross ordinary wages of those employees.

Contractors within the covered industries have the option to make their own contributions if they wish to accrue service in the scheme, however, contractor registration is voluntary, and the benefit comprises a payment instead of leave.

When a worker decides to claim some or all of their long service leave entitlement, they lodge a claim directly with the Authority, and the Authority (not the employer) will pay the benefit.

Building and Construction

Building and construction industry workers registered on or after 1 January 1997 are entitled to 13 weeks of long service leave after ten years of recorded service in the industry, and continue to accumulate 1.3 weeks of leave for every year thereafter. The applicable levy for the building and construction industry is currently 2.10 per cent.

Workers for the purposes of coverage under the Building and Construction Schedule are defined by relevant work, which describes the activities covered workers perform. These include activities like: construction, renovation, alternation, repair and demolition of building works, roadworks and works for the storage or supply of water.

Commented [YM12]: Not sure we need this – people submitting would understand how standard LSL works and the detail about entitlement levels etc isn't really elaborated on or tied to feedback questions. I recommend deleting – but keep the more detailed description of portable LSL

If you wanted to it could include a para at the end that describes how this differs from normal LSL



Contract Cleaning

Contract cleaning industry workers registered on or after 24 June 2000 are entitled to 6.06 weeks of long service leave after seven years of recorded service in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the contract cleaning industry is currently 1.20 per cent.

Workers for the purposes of coverage by the Contract Cleaning Schedule are also defined by relevant work. This work includes work that is undertaken for bringing premises into (or maintained as) a clean condition. From 1 July 2016 drivers and sorters for waste management facilities under contract with the ACT Government are also entitled to access the Portable Schemes.

Community Sector

Community sector industry workers registered on or after 1 July 2010 are entitled to 4.33 weeks of long service leave after five years of recorded service in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the community sector industry scheme is currently 1.20 per cent.



Community Sector workers are defined by the LSL Portable Schemes Act on the basis of industry or sector activities that are carried out under relevant laws, or for the purposes of residential aged care or community aged care services. The community sector industry captures all workers in the industry within the industry as a whole – for example, the chef and the administration staff of a child care centre are covered.

Security



Security industry workers registered on or after 1 January 2013 are entitled to 6.06 weeks of long service leave after seven years of recorded service in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the security industry scheme is currently 1.07 per cent.⁸

Workers in the Security Industry are covered where work is identified by the relevant law (the *Security Industry Act 2003*) as activities performed by the Security Industry.

The Building and Construction Scheme came into effect in 1981, the Contract Cleaning Scheme in 2000, the Community Sector Scheme in 2010, and the Security Scheme in 2013. All schemes are prescribed in schedules to the Act.

⁸ The ACT Long Service Leave Authority Governing Board appoint an actuary to investigate the state and adequacy of the money of the Authority at least once every three years. This includes whether any reduction or increase is necessary in the rates of levies paid to the Authority by employers or voluntary members.

Benefits

Prior to the introduction of the Territory's Portable Schemes, many workers in defined industries were ineligible for leave entitlements under the 1976 LSL Act as they did not remain with the same employer for a long enough period. Worker movement may be the result of multiple factors over which a worker may have some, or not control.

The introduction of the LSL Portable Schemes Act in 2009 enabled more workers to receive long service leave for their service to their industry.

Although portable long service leave does impose a cost to business, the certainty around the cost allows employers in covered industries to meet their long service leave obligations through the payment of levies. Importantly, the applied levies for the LSL Portable Schemes does not exceed the costs that would be payable under the 1976 LSL Act.

In considering how best to design a new portable scheme we are aware there may be advantages and disadvantages of a scheme for employers and employees. Research suggests there are a number of well-established common themes. Some of these are outlined in the table below.³

Advantages of PLSL schemes

Retention of workers – PLSL schemes address challenges in retaining employees in industries with high levels of labour mobility.

Equity – Workers in highly casualised or contract roles otherwise have no practical access.

Mobility and flexibility – Workers have more capacity to move between employers or to take short periods out of employment to meet commitments such as carer responsibilities.

Productivity and work environment – The capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work has advantages for boosting productivity and morale.

Employee attraction – A benefit for “good employers” as employees feel less compelled to stay in poorly managed workplaces in order to meet LSL eligibility requirements.

Non-compliance problems reduced – Employers pay for entitlements as they accrue.

Free-riding problems reduced – Industry based LSL schemes mean that all employers are obliged to fund LSL entitlements, regardless of whether they retain employees who reach the qualifying period for taking leave.

Administrative benefits for employers – Industry funds effectively remove from employers the responsibility for administering LSL arrangements and payment for employees.

Cost certainty – Greater cost stability is provided to employers because the pay-as-you go operation limits the potential for employers to accumulate liabilities and not be able to pay employees their entitlements if they become insolvent or have trading difficulties.

Tax benefits – Employers can claim a tax deduction for payment of the levies, and the portable industry funds are not required to pay tax on their investment income.

Potential disadvantages of LSL portability

Administration costs for employers – This factor may be pronounced during transitional periods of newly established schemes. However, recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost.

Prefunding impact on business cash flows – Smaller employers may fail to provide for LSL benefits in their accounting systems and simply pay LSL payments from consolidated revenues as required. The PLSL schemes require employers to prefund these benefit payments, which impacts the employers' cash flows.

Commented [YM13]: Not sure the benefits section is needed – the previous section covers most of the material.

Commented [YM14]: This para and the table are good content – but I don't think it is placed well in the document – I think either move to attachment or change the heading – conscious that table is a lift from McKell so might go better in an attachment with a more obvious acknowledgement of the report rather than just noting research suggests in the para above.

Commented [FT15R15]: hmmm

³ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf

*The Case for a National Portable Long Service Leave Scheme in Australia.*¹⁰ This report sought views about portable long service in Australia and through representations made by employers, employees, and administrators involved in the management of established LSL Portable Schemes, found that generally there were positive views about Portable Schemes with advantages seen to outweigh costs.

How the schemes are administered

The Long Service Leave Authority administers the LSL Portable Schemes for workers in the ACT and ensures that:

- all employers and their employees in covered industries are registered with the Authority;
- long service leave payments and reimbursements are made in accordance with the Act;
- employers' contribution levies are collected efficiently and effectively; and
- long service leave funds are invested prudently, delivering a modest long-term surplus of assets over liabilities in mature schemes.

Registered employers within each industry pay a quarterly levy to the Authority to fund the long service leave entitlements of their eligible workers. The Authority maintains separate registers and funds for each of the defined schemes.

Levies are invested by the Authority and held in pooled investment funds. If a worker exits a covered industry before taking their entitlements, levies paid by employers for that worker are held in the fund. If there is a deficit or surplus of monies held in a fund, actuarial investigation (conducted at least once every three years) would consider any reduction or increase in levies payable by employers.

Employers for each covered industry must pay a quarterly levy (currently between 1.6 percent and 2.5 per cent of the ordinary wages of covered workers), into a fund managed by the Authority from which in turn workers are paid when they access long service leave.

The Authority maintains separate funds for each scheme and separate registers of employers and workers. The Authority operates off budget and is funded by the levies it collects from employers.

Additional information about the LSL Authority and each of the current defined industries can be found at www.actleave.act.gov.au.

PART 3 - IDENTIFYING NEW INDUSTRIES FOR INCLUSION

New 'covered' industries - Our thinking

In July 2020 the ACT Legislative Assembly resolved to:

¹⁰ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf (2013)

Commented [YM16]: Most of this section feels like it is covered elsewhere or indirectly relevant to the coverage question – suggest delete or cut back

Commented [YM17]: Previous dot points use a different style and spacing format – tidy up pls

- (a) work with Hair Stylists Australia, the ACT Hairdressing Industry, employers, employees, employee bodies and registered training organisations to determine how to include hairdressing in the LSL Portable Schemes; and
- (b) investigate extending the LSL Portable Schemes to other non-public sector industries.

Subsequently, in November 2021, the ACT Legislative Assembly called on the ACT Government to:

- (a) expand the LSL Portable Schemes to the contract catering industry; and
- (b) investigate further industries for inclusion in the LSL portable schemes.

Exploring ways to expand the LSL Portable Schemes to the hairdressing industry and contract catering industries allows us to start thinking about improving access to long service leave entitlements to more workers across the Territory. In doing so, we the ACT Government considered a range of supporting research and material, including worker mobility data released by the Australian Bureau of Statistics, and the Australian Industry Group (Ai Group).

Commented [YM18]: This para uses first person whereas the doc to this point is third person – suggest edit this to third person

We also recognised the objectives and principles of the LSL Portable Schemes Act which can be demonstrated through consideration of:

- a.) the transient nature of the workforce, and the mobility of employees; and
- b.) the composition and diversity profile of an industry, looking at industries with:
 - i. high part-time/causal workers, who typically experience lower wages;
 - ii. higher rates of short-term contracts; and
 - iii. industries with a disproportionate number of female employees.

Drawing on the objectives and principles of the LSL Portable Schemes, and information about how the Schemes currently work, we can make some evidence-based assumptions about the work patterns, availability of employment choices and influencing factors for people that work in industries experiencing high mobility.

Workforce mobility and factors for consideration

In 2020 the Australian Bureau of Statistics released a report into job mobility which indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020¹¹ Our analysis shows us that mobility remained highest for professionals, at 21.7% with technicians and trades, clerical and administrative and sales workers reporting a moderate level of mobility in comparison.¹² Across industries, hospitality workers were identified as the most likely to change jobs in 2020, with 14.3% changing their employer or business; followed by workers in rental and real estate 11.4%; administrative services 10.5%; Retail Trade 9.3%; and Professional Services 9.2%.

The ABS report showed high job mobility rates among community and personal service workers noting that almost 10 per cent of workers had changed employers in the reporting year. Given that seven years is the usual qualifying period for workers to access long service

¹¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release/job-mobility>

¹² <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release/job-mobility>

leave in the Territory, this trend indicates that many workers may not stay in continuous employment with the same employer long enough to access long service leave entitlements, resulting in fewer workers being eligible to access long service leave entitlements. However, the reasons for job mobility may be varied and not entirely attributed to the individual's decision.

The material shows us that high mobility industries have a higher ratio of young people and ~~women~~ who may experience particular influencing factors that impact their ability to remain with a single employer – such as family and caring responsibilities, study and professional development opportunities and the inherent transient nature of business within these industries themselves.

In many cases these industries include a higher number of women ~~than~~ other industries. When we examine the trends around women in the workforce, we see that women across careers tend to move in and out of the workforce for a number of reasons.

Commented [YM19]: Previous para mentions women also, maybe limit it to young people and start the women analysis here

Women under the age of 35 represent over 55% in industries in retail, accommodation and food services, while women over 45 account for almost 60% of those employed in these industries, with over 60% employed in these industries once they reach 55 years of age.

The labour force participation rate for people with children under five is 65.5% for women compared with 94.4% for men, with women representing over 50% of workers in administrative and accommodation and food services, over 70% employees in clerical and administration, almost 60% in retail sales, and over 70% in community and personal services, compared with less than 40% as managers.¹³ This could imply that women are exiting the workforce to care for children, often leaving before accruing the required service period for long service leave and, then return to the workforce often in the same industry, without the ability to revive their previous service history.

In 2020, women were also more likely to continue to work as they got older compared with earlier years. For example, the employment-to-population ratio for 65 year old women in 2020 (35.6%) was more than three times higher than similar aged women in previous years (less than 7% in 1980, and around 10% in 1966 and 2000).¹⁴

~~Recognising these challenges, it is our intention to improve equity of access to long service leave to allow more workers across non-public sector occupations the same opportunity to rest, recover and recharge as is granted to workers in more traditional single employer industries.~~

~~Drawing on our understanding of industries in the Territory, data released by the Australian Bureau of Statistics¹⁵ and the Australian Industry Group (AI Group)¹⁶, we have identified six industries that align with the objectives of the LSL Portable Schemes and mobility~~

Commented [YM20]: If this is the concluding point then there may be too much data in the previous paras. Suggest doing enough to establish there are more women in insecure employment roles and they have higher rates of transmission would be sufficient

Also, this para has a bit of a structure issue. "single employer industry" isn't quite the right description of sectors where there is low transmission of employment. Uses first person, and have been dropping the non public sector references.

On the public sector bit – I prefer we just stay silent on public sector not being considered issue – but if you want to keep the reference then need to explain why we aren't looking at public sector coverage (redundant in my view)

¹³ <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#data-download>

¹⁴ <https://www.abs.gov.au/articles/changing-female-employment-over-time#:~:text=Women%20made%20up%20almost%20half,when%20women%20usually%20have%20children>

¹⁵ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-aust:alia/feb-2020>

¹⁶ <https://www.aigroup.com.au/news/reports/2020/labour-turnover-in-2020/>

criteria sectors with insecure employment characteristics that extending coverage would be beneficial for workers. These are:

- hairdressing and beauty services;
- hospitality industry;
- rental and real estate industry;
- administrative services¹⁷ industry;
- retail trade industry; and
- professional services industry.

Classifying new industries

The Portable Schemes currently defines which industries are 'covered industries' through a unique schedule for each industry to the LSL Portable Schemes Act. The current dominant scheme design is to describe the covered industry through 'relevant work' performed by workers.

However, the current scheme design presents challenges and administrative difficulties, particularly:

- requirement to amend the terms within each scheme as job roles or defined functions change.
- difficulties in ensuing regulatory arrangements are contemporary noting that it is difficult to keep pace with industry modernisation on the basis of defined terms or references to other legislation.
- unintended consequences arising from defining terms within local legislation in isolation from nationally agreed classification systems – potentially adding to confusion for workers and employers establishing within the Territory.
- eligibility to entitlements under the existing LSL Portable Schemes is not consistent, noting that workers in each industry have different service period rates.

As such, it is our intention to ensure that any expansion of the schemes is compatible with the current modelling but flexible enough to be used for future design purposes and expansions. This would help to ensure ease of administration for the Authority, workers and employers.

With this in mind, we have explored the use of the Australian and New Zealand Standard Industrial Classification (ANZSIC) as the preferred classification system for workers within the newly proposed 'covered industries', rather than follow the existing scheme design preference to define 'relevant work'.

What is ANZSIC and how can it be useful

The Australian and New Zealand Standard Industrial Classification (ANZSIC) is the standard classification system used in Australia and New Zealand to collect, compile and publish information about the operation of industries. It enables information about businesses,

¹⁷<https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/51DA12AE3E7A62B5CA25711F00146E45?ope ndocument>

Commented [YM21]: What is mobility criteria? Maybe reword to note we have identified sectors with insecure employment characteristics and consequently that extending coverage would be beneficial for workers.

Commented [YM22]: This Segway is cheeky – we present general data then transition to the results of industry specific analysis and the only evidence presented to support that is a single sentence along the lines of trust us, we have done the analysis, you don't need to see it – these are the 5 sectors. If there is some internal working document that documents this analysis I would like to see it and to consider whether there could be some sort of informative summary included somehow.

This missing information is made more problematic by the fact that the relative rates of insecure work/high transmissibility/vulnerable workers would be quite different comparing say professional services and retail.

Finally, if these six were added to the 4 already covered, what ACT labour market sectors of any significant size would be left out?

If the discussion paper is essentially making an argument for the entire private sector to be included, it should reflect that outcome somehow?

Commented [FT23R23]: Is this a risk and should it be removed? My reading is that MY is suggesting we remove this content.

Commented [EL24]: See comment above, where we are mentioning hospitality, please expressly state it includes contract catering

Commented [YM25]: Lead in para says industry – don't duplicate

Commented [YM26]: Not a well understood description – consider a footnote or bracketed description

Commented [YM27]: Is professional services prone to insecure work? We would need specific data described somewhere to back that up – also less likely to be untrained/young people etc

Commented [YM28]: Much of the ANZSIC section feels problematic to me – in a tail wagging the dog kind of way. The paper introduces the definition system to guide coverage selection rather than coverage selection informing definition.

I think either delete or move much of the general this is ANZSIC stuff to attachments.

The discussion around what types of business/occupations would fit into the proposed new covered industries is useful and interesting – but rather than presenting them as correlated via ANZSIC, the focus should be on similar workforces in terms of type of person and transferability and need for sufficient scale – that info is there now but it comes across as ancillary to the ANZSIC

Commented [YM29]: That's a strange term, needs an explanation if keeping it. And I'm not sure its necessary to establish here that there is more than one design in use

Commented [YM30]: This feels like an internal discussion – suggest deleting – we would do the work behind the scenes to suggest how to define – no need for stakeholders trying to suggest an alternative to ANZSIC.

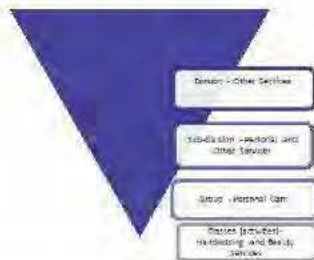
including employee data, to be grouped by reference to their industry and supports comparisons between industries.

ANZSIC provides a basis for the standardised collection, analysis and dissemination of economic data on an industry basis for Australia and New Zealand. Use of the ANZSIC results in improved comparability of industry statistics produced by the two countries. ANZSIC was jointly developed by the Australian Bureau of Statistics and Statistics New Zealand in 1993 in order to make it easier to compare industry statistics between the two countries and with the rest of the world.

ANZSIC is a hierarchical classification system with four levels, namely Divisions (the broadest level), Subdivisions, Groups and Classes (the finest level). At the Divisional level, the main purpose is to provide a limited number of categories which provide a broad overall picture of the economy and are suitable for the publication of summary tables in official statistics. The Subdivision, Group and Class levels provide increasingly detailed dissections of these categories for the compilation of more specific and detailed statistics.

ANZSIC is used by a wide range of other users from government, academia and the private sector who use it for financial, administrative and statistical purposes. For example, the ACT Government uses ANZSIC to collect data relating to workers' compensation as it classifies entities based on their main business activity as a coherent classification system by grouping similar professions into divisions, sub-divisions and classes.

In general terms, ANZSIC divisions are the broadest category representing a particular industry, with smaller sub-divisions, groups, and classes representing occupations, grouped together where they have primary activities in common.



As an example, particular job activities within the hairdressing and beauty services industry can be found under: Division 5 - Other Services, Subdivision 95 - Personal and Other Services, Group - 951 Personal Care Services and finally, Class 9511 Hairdressing and Beauty Services.

ANZSIC will also allow us a method to interrogate available national and local data – which also uses this system of classification – to identify the number and corresponding sizes of businesses in the Territory that an expanded scheme would capture. This is important because the number and size of businesses, and the number of employees in the industries considered for expansion is important in scheme design, and a factor in the determination of levy rates applied to businesses required to pay a percentage of their employee's gross ordinary wages to the Authority to fund the scheme.

In addition, we can gain insight into the number workers in each of those industries, working in small, medium and large businesses allowing us to monitor the industries and participation rates.

Commented [YM31]: Interesting and accurate but internal and unrelated to the questions being asked I think. Delete?

For the expansion of the LSL Portable Schemes, we think it appropriate to consider the profile of the industry considered for expansion – factors such as, but not limited to, the number of employers and employees making up the industry, the administrative requirements of businesses and the Authority, the levy that would be applied (determined through actuarial review) and whether this is viable.

One of the challenges with the ANZSIC is that we will not always be able to rely on the highest level of classification – as such we have undertaken extensive analysis of the relevant classes within each sub-division and division to determine the highest level that should be captured by the expansion proposal, without placing unnecessary regulation on industries that do not meet the principles of the LSL Portable Schemes. This work is discussed further in greater detail below.

Using the ANZSIC as the basis for describing who will be covered by our proposed expansion of the LSL Portable Schemes enables us easily to communicate with industry which industry and in turn which workers, will be covered.

Inclusions - primary 'relevant' activities

For the purpose of designing our expansion proposal, we are seeking to take advantage of the highest or broadest classification structure utilising the ANZSIC system. For some of the identified industries this will allow us to include all workers at a Divisional level, while for others this may mean that classification at the Class level is more appropriate. Our assessment of each of these is discussed in more detail below.

Personal and Other Services (incorporating hairdressing and beauty services)

Division 5 Personal and Other Services (with exclusions)

When we assessed the breadth of activities and occupations at the Division, Sub-Division, Group and Class level for hairdressing and beauty services we considered expansion at the Divisional level with some exclusions would maximise the benefits of the Schemes, align with the core principles of the LSL Portable Schemes Act and minimise the risk of inadvertently capturing workers who are not vulnerable to losing access to long service leave entitlements.

For the purposes of this consultation, we propose to define the workers for the purpose of inclusion within the LSL Portable Schemes under the ANZSIC Division 5, on the basis of:

- a) Subdivision 95 Personal and Other Services
 - a. Group 951 Personal Care Services
 - i. Class 9511 Hairdressing and Beauty Services

This will include classes of workers that are mainly engaged in providing hairdressing services or in providing beauty services such as nail care services, facials or applying make-up, such as:

Commented [YM32]: I think I have already suggested much of this section be deleted – but I note the intro section that lists the industries of interest refers to hair and beauty – this whole section presupposes our interest is personal services sector – readers won't get why we are writing half a page on excluding household staff. I understand its because of where they sit in the ANZSIC structure – but its tail wagging the dog even if they manage to appreciate the relationship.

• **Primary activities**

- Barber shop operation
- Beauty service
- Electrolysis service
- Hair restoration service (except hair transplant service)
- Hairdressing service
- Make-up service
- Nail care service
- Skin care service
- **Tanning (solarium) service**

Commented [YM33]: What is primary activities in the context of hair and beauty?

Commented [YM34]: Are solariums legal in the ACT? Suggest delete

To define the industry as a limited subset of Division S, for example limited to Class 9511 hairdressing services, would mean a very small number of employers would be covered by the expanded scheme. This would result in potential cost (levy would likely be higher than for other schemes, and higher than could be reasonably expected) and administrative burden for businesses and the Authority that would be difficult to justify and sustain.

However, we are conscious that at the Division level there are a broad range of services that are unlikely to meet the principles of the Portable Schemes – this includes a broad range of personal services including religious, civic, professional and other interest group services; selected repair and maintenance activities; and private households employing staff. As such, it is not our intention to include these workers within the proposal.

Workers mainly engaged in providing medical skin care services such as cosmetic surgery and dermatology services, or in providing medical or surgical hair replacement or transplant services, are not considered in scope for coverage under Portable Schemes. These services are covered by a different classification - ANZSIC Class 8512 Specialist Medical Services.

We propose to exclude the following worker classes from coverage under the expanded schemes.

- a) Subdivision 96 - Private Households Employing Staff and Undifferentiated Goods – and Service – Producing Activities of Households for Own Use
 - a. Group 960 - Private households employing staff and undifferentiated goods – and service – producing activities of households for own use
 - i. Class 9601 Private household employing staff
 - ii. Class 9602 Undifferentiated goods – producing activities of private households for own use
 - iii. Class 9603 Undifferentiated service – producing activities of private households for own use
 - iv. Class 9540 Religious Services

Accommodation and Food Services (incorporating contract catering)

Division H: Accommodation and Food Services

When we looked at expanding the Portable Schemes to the contract catering industry, we noted that occupations within the Accommodation and Food Services Division (Division H of

ANZSIC) are similar across the broader Divisional level, in that they have common characteristics and perform similar functions.

The Accommodation and Food Services Division includes workers mainly engaged in:

- providing short-term accommodation for visitors;
- providing food and beverage preparation services; and
- serving of meals and beverages for consumption by customers.

As such we consider it viable to take advantage of the division classification based on the likelihood of worker mobility across occupations making up the division. It is also our view that employees in occupations within the Accommodation and Food Services Division may cease employment with one employer due to reasons beyond their control, such as due to the closure of businesses, but seek to remain within the industry itself.

To limit the expansion of the LSL Portable Schemes only to Contract Catering Services would mean the expansion would only capture a small number of businesses and workers, including a majority of small businesses that may operate alongside workers performing the same services within the same employer; this could increase the inherent disadvantage facing some workers in the Food Services industry who would otherwise seek to remain within the industry.

In relation to the contract catering industry (using ANZSIC Class 4513 Catering Services), a review of workers' compensation data indicates that there are approximately 30 registered ACT based employers and 1373 workers in catering services, which in the 2020 – 2021 year comprised:

- 177 small businesses (less than 5 employees) – with approximately 146 workers; and
- 6 medium businesses (between 5 and 10 employees) – with approximately 168 workers; and
- 2 large businesses (10 or more employees) – with approximately 878 workers.

As such, we are of the view that Division H with some exceptions would appropriately capture workers who should be considered for coverage, based on alignment with the principles (gender balance/mobility etc). This means workers within those industries will be entitled to long service leave entitlements under the expansion proposal.

It is our intention to expand the Portable Schemes to Division H¹⁸ to capture:

- a) Sub-Division 44 Accommodation
- b) Sub-Division 45 Food and Beverage Services
 - a. Group 451 Cafes, Restaurants and Takeaway Food Services
 - i. Class 4511 Cafes and Restaurants
 - ii. Class 4512 Take Away food Services
 - iii. Class 4513 Catering Services

¹⁸ Excluded from this division are gambling institutions (casinos); amusement and recreation parks; long-term (residential) caravan parks; theatre restaurants; sporting clubs; and other recreation or entertainment facilities providing food, beverage, and accommodation services

- b. Group 452 Pubs, Taverns and Bars
 - i. Class 4520 Pubs, Taverns and Bars
- c. Group 453 Clubs (Hospitality)

There are no proposed exclusions for worker classes under Division H.

Rental, Hiring and Real Estate Services

Division L: Rental, Hiring And Real Estate Services (no exclusions)

The Rental, Hiring and Real Estate Services Division includes workers mainly engaged in renting, hiring, or otherwise allowing the use of tangible or intangible assets, and workers providing related services.

The assets may be tangible, as in the case of real estate and equipment, or intangible, as in the case with patents and trademarks. The division also includes workers engaged in providing real estate services such as selling, renting and/or buying real estate for others, managing real estate for others and appraising real estate.

Similar to the hairdressing and beauty services industry, workers within the rental and real estate industries sit within a broader Division under ANSZIC.

In considering the expansion of the Portable Schemes to this sector, we are considering expansion to the Division level. This is on the basis that occupations that make up the division have similar primary activities and rates of mobility across the industry. Expansion of the schemes to include (Division L: Rental, Hiring And Real Estate Services) would support attraction, retention and provide leave entitlements to workers who may otherwise miss out on accessing these entitlements.

It is our intention to include:

- a) Subdivision 67 Property Operators and Real Estate Services
 - a. Group 671 Property Operators
 - b. Group 672 Real Estate Services
 - i. Class 6711 Residential Property Operators
 - ii. Class 6720 Real Estate Services including:
 - Brokering service (real estate)
 - Real estate agency service
 - Real estate auctioning service
 - Real estate management service
 - Real estate rental agency service
 - Time share apartment management service
 - Valuing service (real estate)
 - iii. Class 6712 Non-Residential Property Operators, including:
 - Agricultural land renting or leasing, Commercial or industrial property renting or leasing,
 - Commercial property body corporation,
 - Commercial property strata corporation,
 - Factory renting or leasing,

- Office space renting or leasing,
- Self-storage renting or leasing,
- Shopping centre renting or leasing,
- Warehouse renting or leasing

This would capture workers in property operator and real estate services including: apartment (except holiday apartment) renting or leasing, Caravan park, residential (other than holiday), operation, Flats (except holiday flats) renting or leasing, House (except holiday house) renting or leasing, Residential property body corporate operation, Residential property strata corporation operation

It is worth noting that our proposal to capture Division L Rental Hiring and other Real Estate Services would not include workers engaged in operating hotels or motels, boarding or rooming houses, student residences, caravan holiday parks, holiday houses or flats as these industries are included in Class 4400 Accommodation which is discussed above. It will also not capture individuals operating as a residents' organisation to promote the interest of the local community identified by Class 9559 Other Interest Group Services. Similarly, workers engaged in providing title transfer or conveyancing service (legal services) or engineering or structural property inspection services, or non-residential land development property operators are not included in this Division.

Administrative and Support Services

Division N - Administrative and Support Services (with exclusions)

The Administrative and Support Services Division includes workers mainly engaged in performing routine support activities for the day-to-day operations of other businesses or organisations.

Workers providing administrative support services are mainly engaged in activities such as office administration; hiring and placing personnel for others; preparing documents; taking orders for clients by telephone; providing credit reporting or collecting services; and arranging travel and travel tours.

Workers providing other types of support services are mainly engaged in activities such as building and other cleaning services; pest control services; gardening services; and packaging products for others.

The activities undertaken by workers in this division are often integral parts of the activities found in all sectors of the economy. Recent trends have moved more towards the outsourcing of such non-core activities. The workers classified in this division specialise in one or more of these activities and can, therefore, provide services to a variety of clients.

Expansion of the LSL Portable Schemes to (DIVISION N - Administrative and Support Services) would provide access to entitlements for a cohort that may be disadvantaged, in that they are not able to access leave entitlements because they do not achieve the necessary amount of service with a single employer before changing jobs to secure better work conditions.

The occupations proposed for inclusion in this industry may undertake work in industries currently covered under the LSL Portable Schemes, but be excluded under the current provisions.

The (DIVISION N - Administrative and Support Services) would include:

- a) Subdivision 72 Administrative Service
 - a. Group 721 Employment Services
 - i. Class 7211 Employment Placement and Recruitment Services
 - ii. Class 7212 Labour Supply Services
 - b. Group 722 Travel Agency and Tour Arrangement Services
 - i. Class 7220 Travel Agency and Tour arrangement Services
 - c. Group 729 Other Administrative Services
 - i. Class 7291 Office Administrative Services
 - ii. Class 7292 Document Preparation Services
 - iii. Class 7293 Credit Reporting and Debt Collection Services
 - iv. Class 7294 Call Centre Operations
 - v. Class 7299 Other Administrative Services

In assessing Division N – Administrative and Support Services against the principles of the Portable Schemes, and considering mobility data, we do not intend on expanding coverage to the following sub-division, group and classes as it is our view that the primary activities for these occupations and workers, do not represent the same levels of mobility targeted by this review.

- a) Subdivision 73 Building Cleaning, Pest Control and Other Support Services
 - a. Group 731 Building Cleaning, Pest Control and Other Support Services
 - i. Class 7311 Building and Other Industrial Cleaning Services
 - ii. Class 7312 Building Pest Control Services
 - iii. Class 7313 Gardening Services
 - b. Group 732 Packaging Services
 - i. Class 7320 Packaging Services

Retail Trade

Division G: Retail Trade (with exclusions)

The Retail Trade Division includes workers mainly engaged in the purchase and/or on selling, the commission-based buying, and the commission-based selling of goods, without significant transformation, to the general public. The Retail Trade Division also includes workers that purchase and on-sell goods to the general public using non-traditional means, including the internet. Workers are classified within the Retail Trade Division in the first instance if they buy finished goods and then on-sell them (including on a commission basis) to the general public.

Retail workers generally operate from premises located and designed to attract a high volume of walk-in customers, have an extensive display of goods, and/or use mass media advertising designed to attract customers. The display and advertising of goods may be physical or electronic.

While non-store retailers, by definition, do not possess the physical characteristics of traditional retail workers with a physical shop-front location, these workers share the requisite function of the purchasing and on-selling of goods to the general public, and are therefore included in this division.

Noting that workers within retail trade meet the principles of the Portable Schemes, and have a relatively high degree of mobility we propose to include the Division G on the following basis:

- a) Subdivision 39 Motor Vehicle and Motor Parts Retailing
 - a. Group 391 Motor Vehicle Retailing
 - i. Class 3911 Car Retailing
 - ii. Class 3912 Motorcycle Retailing
 - iii. Class 3913 Trailer and Other Motor Vehicle Retailing
 - b. Group 392 Motor Vehicle Parts and Tyre Retailing
 - i. Class 3921 Motor Vehicle Parts Retailing
 - ii. Class 3922 Tyre Retailing
- b) Subdivision 40 Fuel Retailing
 - a. Group 400 Fuel Retailing
 - i. Class 4000 Fuel Retailing
- c) Subdivision 41 Food Retailing
 - a. Group 411 Supermarket and Grocery Stores
 - i. Class 4110 Supermarket and Grocery Stores
 - b. Group 412 Specialised food retailing
 - i. Class 4121 Fresh Meat, Fish and Poultry Retailing
 - ii. Class 4122 Fruit and Vegetable Retailing
 - iii. Class 4123 Liquor Retailing
 - iv. Class 4129 Other Specialised Food Retailing
- d) Subdivision 42 Other Store-Based Retailing
 - a. Group 421 Furniture, Floor Coverings, Houseware and Textile Goods Retailing
 - i. Class 4211 Furniture Retailing
 - ii. Class 4212 Floor Coverings Retailing
 - iii. Class 4213 Houseware Retailing
 - iv. Class 4214 Manchester and Other Textile Goods Retailing
 - b. Group 422 Electrical and Electronic Goods Retailing
 - i. Class 4221 Electrical, Electronic and Gas Appliance Retailing
 - ii. Class 4222 Computer and Computer Peripheral Retailing
 - iii. Class 4229 Other Electrical and Electronic Goods Retailing
- e) Subdivision 423 Hardware, Building and Garden Supplies Retailing
 - i. Class 4231 Hardware and Building Supplies Retailing
 - ii. Class 4232 Garden Supplies Retailing
- b. Group 424 Recreational Goods Retailing
 - i. Class 4241 Sport and Camping Equipment Retailing
 - ii. Class 4242 Entertainment Media Retailing
 - iii. Class 4243 Toy and Game Retailing
 - iv. Class 4244 Newspaper and Book Retailing
 - v. Class 4245 Marine Equipment Retailing
- c. Group 425 Recreational Goods Retailing
 - i. Class 4251 Clothing Retailing
 - ii. Class 4252 Footwear Retailing
 - iii. Class 4253 Watch and Jewellery Retailing
 - iv. Class 4259 Other Personal Accessory Retailing

- d. Group 426 Department Stores
 - i. Class 4260 Department Stores
- e. Group 427 Pharmaceutical and Other Store-Based Retailing
 - i. Class 4271 Pharmaceutical, Cosmetic and Toiletry Goods Retailing
 - ii. Class 4272 Stationery Goods Retailing
 - iii. Class 4273 Antique and Used Goods Retailing
 - iv. Class 4274 Flower Retailing
 - v. Class 4279 Other Store-Based Retailing

We propose to exclude the following classes from our expansion proposal, on the basis that our understanding is that these workers do not experience similar instances of mobility:

- a) Subdivision 43 Non-Store Retailing and Retail Commission based Buying and/or Selling
 - a. Group 431 Non-Store Retailing
 - i. Class 4310 Non-Store Retailing
 - b. Group 432 Retail Commission-Based Buying and/or Selling
 - i. Class 4320 Retail Commission-Based Buying and/or Selling

Professional, Scientific and Technical Services

Division M: Professional, Scientific and Technical Services (with exclusions)

The Professional, Scientific and Technical Services Division includes workers mainly engaged in providing professional, scientific and technical services. Workers engaged in providing these services apply common processes where labour inputs are integral to the production or service delivery. Workers in this division specialise and sell their expertise. In most cases, equipment and materials are not major inputs. The activities undertaken generally require a high level of expertise and training and formal (usually tertiary level) qualifications.

These services include scientific research, architecture, engineering, computer systems design, law, accountancy, advertising, market research, management and other consultancy, veterinary science and professional photography.

We propose investigating expansion of the Portable Schemes to the following ANZSIC groups for the Professional Services industry:

- a) Group 693 Legal and Accounting Services
- b) Group 694 Advertising Services
- c) Group 695 Market Research and Statistical Services
- d) Group 696 Management and Related Consulting Services

These groups of workers undertake similar primary activities and expansion of the Portable Schemes would allow these workers to access entitlements similar to those available to occupations with similar rates of mobility.

Being mindful of the Portable Schemes principles and objective, we recommend the following groups are excluded on the basis that they are specialised occupations. It is unlikely, given the skills and primary activities of these occupations, that workers would have

high rates of mobility and work in the occupations proposed for inclusion under the expanded Portable Schemes.

- a) ~~Subdivision 70 Computer System Design and Related Services~~
- b) ~~Subdivision 69 Professional, Scientific and Technical Services (Except Computer System Design and Related Services)~~
 - a. ~~Class 691 Scientific Research Services~~
 - b. ~~Class 692 Architectural, Engineering and Technical Services~~
 - c. ~~Class 697 Veterinary Services~~
 - d. ~~Class 699 Other Professional, Scientific and Technical Services~~

PART 5 - WHAT A NEW SCHEME MIGHT LOOK LIKE

Our design vision

Expansion of the Portable Schemes new initiative. Currently, non-public sector industries not included under the LSL Portable Schemes in the ACT are entitled to long service leave under the *Long Service Leave Act 1976* (1976 Act) and are unable to transfer accumulated leave if they change employers within the industry. However, as we discussed above, many workers are missing out on this entitlement often due to reasons beyond their control.

The ACT's economic recovery plan 2022 is focused on creating and protecting good local jobs. Jobs in health, education, construction, retail, renewable energy, tourism and hospitality, and technical, scientific and professional services. This includes pursuing an ambitious and progressive legislative program.¹⁹

For more than two decades, this jurisdiction has advanced nation-leading reforms that have ensured Canberra remains one of the most liveable, inclusive and progressive cities in the world – and that will continue in 2022. Amending the LSL Portable Schemes is another example of the ACT Government supporting the workers' access to fair and equitable entitlements.

Portable Long service leave in Australia

Long service leave forms part of the National Employment Standards (NES) under the *Fair Work Act 2009*. The NES apply to all employees covered by the national workplace relations system, regardless of any award, agreement or contract.

Like the ACT, New South Wales, Queensland, and Victoria currently have long service leave portable schemes in place for the following industries:

NSW

- Building and Construction Industry (introduced 1975)
- *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*

QLD

- Building and Construction (1990)

¹⁹ <https://www.andrewbarr.com.au/news/latest-news/our-plan-for-2022/>

- Contract Cleaning (2005)
- Community Services (2020)

Vic

- Community Services Sector (2019)
- Contract Cleaning Industry (2019)
- Security Industry (2019)

Currently, application of the LSL Portable Scheme in the ACT is designed to cover a specified worker within an identified class of workers or industry, who;

- a) is employed by an employer within a covered industry; and
- b) performs work in that covered industry.

This design approach allows the inclusion of workers performing specific functional roles within an industry, or all workers within an industry, or a combination based on the circumstances of a particular industry.

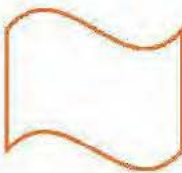
This two-tiered approach permits the Act to cover specific functional roles within an industry. Each industry has separate arrangements or industry specificities that are described by a schedule to the LSL Portable Schemes Act.

This approach allows each separate industry to have a specific levy arrangement, required service period, and resulting leave provisions.

However, in designing our approach for the new covered industries we have, as discussed above, identified the use of the ANZSIC system as a preferred style – which will allow us to easily identify coverage on the basis of Division, Subdivision, Group or Class level as is most appropriate to uphold the principles and objectives of the LSL Portable Schemes.

We have also undertaken preliminary analysis of each of the proposed industries and found significant similarities across sectors that will allow us to group industries with similar characteristics under a central entitlements stream – however, this will be subject to in-depth actuarial analysis prior to finalisation.

This may assist us avoiding the need to have several new schedules, which in turn may allow for the inclusion of additional industries in the future by reference to a relevant ANZSIC division – on the basis of similar characteristics.



Our design vision is to minimise the complexity in drafting the new provisions and maximise the useability and readability of the new arrangements.

To this effect, we propose to create a single new schedule to the LSL Portable Schemes Act that will:

1. clearly identify by ANZSIC Code what industries are included for the purposes of the Schemes;

Commented [YM35]: Problematic term, some people will wonder why it is only preliminary and others will ask to see the analysis.

Commented [FT36R36]: Delete? As above, my reading is that MY is suggesting we remove this content.

Commented [YM37]: This introduces a new concept – merging of schemes. It defers the issue to actuarial analysis, its not clear what if anything we are asking for comment on and there is insufficient background for a reader to understand what it is we are proposing. And finally, linking industries based on central characteristics or entitlements isn't necessarily the primary reason for merging. I would have thought transmissibility between would be a stronger driver.

Commented [FT38R38]: Delete? As above, my reading is that MY is suggesting we remove this content.

Commented [YM39]: Good general principle, but not asking any specific question for feedback. I don't imagine any stakeholder is going to put a counter view? delete

Commented [FT40R40]: As above, my reading is that MY is suggesting we remove this content.

Commented [YM41]: Most readers wont be looking at the Act so this is quite secondary and I'm not sure its achievable without amending the existing scheme cover provisions

Commented [YM42]: It isn't clear what we are asking people to comment on here. There is a short description of the 2 coverage models (ie all employees of a covered employer vs selected occupation types)– but goes on to not very clearly indicate we prefer the first option – and doesn't ask for feedback.

If this is here we should describe how the two approaches work, indicate which of the existing schemes use which, ask if there is a preference of approach and pros and cons for the purposes of new industry and be clear that we are not at this stage proposing to change the rules for any existing covered industries.

Commented [FT43R43]: Delete? My reading of the comment is that the section be removed.

2. clearly identify the requirements and entitlements that apply to the new Schemes; and
3. set out arrangements for leave credits, payments in lieu of leave etc.

There will be consequential amendments to the LSL Portable Schemes Act to make the required arrangements, however, we anticipate that these will be technical in nature.

How would it work?

In the ACT, employers that have employees covered by a defined Scheme must:

- register with the LSL Authority;
- register their employees with the Authority; and
- pay the Authority a defined levy contribution (a percentage of the gross ordinary wages of these employees).

When a worker decides to claim some or all of their long service leave entitlement, they can lodge a claim directly with the Authority, and the Authority (not the employer) will pay the benefit.

Contractors, such as working directors and sub-contractors, have the option to make their own contributions if they wish to accrue service in the scheme. However, contractor registration with a scheme is voluntary and the benefit comprises a payment instead of leave.

Functions of the LSL Authority

The LSL Authority has a number of functions. As these would relate to a new portable scheme, or expansion of the coverage of the existing Schemes, the LSL Authority would:

- administer the 'new' long service leave benefits scheme, in accordance with requirements established by the LSL Portable Schemes Act;
- identify and register employers and employees relevant to the 'new' scheme
- maintain records of workers service under the new scheme;
- provide registered employees with an annual statement about their service, to ensure that records are correct;
- maintain records of employer contributions to the new scheme;
- assess workers' claims for long service leave;
- make the required leave payments to employees.

Further information about the current functions of the LSL Authority can be found at <https://actleave.act.gov.au/>.

As our design approach is formalised, the Authority would prepare dedicated education material to support the newly covered industries understand their obligations and gain certainty over coverage. We will support this by updating the Community on the progress of our reform approach and implementation.

Registration Requirements

The LSL Authority keeps individual registers of employers and employees for each industry covered by the LSL Portable Schemes and provides registration support. We envisage that similar registration requirements would be required for a new hairdressing scheme;

Commented [YM44]: The how would it work section describes mostly status quo activity and isn't clear what aspects (if any) would be any different. I think make clear the change we are seeking stakeholder views on or delete the whole section.

Employers for a defined industry are required to register with the Authority within one month of becoming an employer for the industry. Employers must also notify the Authority of any changes to their registration details, such as operating address or trading name, within a specified time.

Employers in defined industries are required to provide the LSL Authority quarterly returns containing the name of each employee who carried out work for them during the preceding quarter. Information about the total ordinary remuneration paid to the employee during the quarter, and the number of working days to which the remuneration relates is also required.

Employers will normally register their workers, including any apprentices, when they start work. Once registered, employees receive a letter outlining the scheme and provide their registration number.

An individual employee may apply to the Authority as a worker for a covered industry, if they believe they have not been registered. There are time limits for registration requirements and registration is mandatory for all workers in a defined industry.

PART 6 – FURTHER INFORMATION

Conclusion

The ACT Government is committed to supporting and protecting workers' entitlements to long service leave.

Through this Consultation Paper, we have provided the industry with an outline of how a new scheme might work for identified industries, and what activities or roles might be considered 'relevant work' for inclusion in the scheme. It is expected that a new scheme would better support career options and prospects for workers across all the identified industries, as well as facilitate movement and professional development between organisations.

We invite all interested stakeholders to consider the information in this Consultation Paper and make relevant submissions, focused on the key consultation questions. Your submission has an important role in assisting us to inform the ACT Government's consideration of expansion of the LSL Portable Schemes.

The consultation period closes on xx May 2022.

Commented [YM45]: This is largely duplicative – suggest deleting unless there are going to be specific questions summarised in here

Commented [YM46]: Where are the key questions?

From: "Lukins, Ellen"
Sent: 11/05/2022 5:39 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>; "Findlay, Teo" <Teo.Findlay@act.gov.au>
Subject: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments
Attachments: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments.docx

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Hi Rebecca and Teo

Michael has provided his feedback in the attached on the PLSL expansion consultation paper. I'll upload to the Trim container and revert back to you for amendment.

If you could please consider and update the paper so we can progress this to the Minister's office that would be much appreciated.

In essence, and noting the time and urgency in getting this paper out, I would note and propose:

- we finalise the consultation paper - on my reading working in the comments will translate to a shorter/targeted paper for external consultation - please also consider whether we continue to include professional services in the proposed industries for expansion noting Michael's comment re insecure work, it also highlights what industries are left that operate in the ACT given we don't have a huge agriculture, manufacturing and mining sector presence in the ACT;
and

Sch 1 1.6

Happy to discuss.

Thank you

EL

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 19/05/2022 6:46 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper
Attachments: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper.docx

OFFICIAL



ACT
Government

Portable Long Service Leave Expansion

Consultation Paper

A proposal to establish new portable long service leave schemes in the
ACT

Introduction

The ACT Government is committed to improving working conditions for all Canberrans, including supporting employees' access to portable long service leave in industries with high rates of insecure employment or employee mobility.

Long service leave enables employees to recover their energy and return to work renewed, refreshed and reinvigorated after long periods of service. There are many well-recognised benefits from supporting long service leave for employers and employees, including improved employee health and wellbeing and improved productivity.

The [Long Service Leave Portable Schemes](#) (portable schemes) in the ACT enable long service leave entitlements to be accumulated on an employee's length of service in a particular industry rather than their length of service with a single employer. The portable schemes allow for employees to transfer from employer to employer without losing the long service leave entitlements they have accrued - to 'port' their entitlements.

In the ACT workers in the building and construction, contract cleaning, community sector and security industries are covered by portable schemes.

The [ACT's economic recovery plan 2022](#) is focused on creating and protecting good local jobs. Jobs in health, education, construction, retail, renewable energy, tourism and hospitality and technical, scientific and professional services.

To further support employee access to fair and equitable employment entitlements the ACT Government has initiated a review of long service leave coverage under the *Long Service Leave (Portable Schemes) Act 2009* with a view to identifying additional occupations or industry sectors that should be provided access to portable long service leave.

Consultation is underway to seek feedback on this proposal to expand portable schemes and invite views from the ACT community, including employees, employers, unions, industry groups and peak bodies.

Making a submission

The purpose of this consultation is:

1. To seek feedback on the proposed expansion of portable long service leave schemes to the following industries:
 - hairdressing services
 - contract catering.
2. To invite views on other ACT occupations or industry sectors that should also have access to portable long service leave, for example:
 - personal and other services (which includes hairdressing and beauty services)

- accommodation and food services (which includes contract catering)
- rental, hiring and real estate services
- administrative and support services (includes travel agency services and general administrative support services including labour hire)
- retail trade.

Written submissions are invited by 13 July 2022 and should be sent by email to wsir@act.gov.au.

As part of our consideration submissions may be published, if you do not wish your submission to be published or made publicly available please mark it as confidential.

Background

How portable schemes work

Increased mobility in employment has meant that long service leave in its traditional form has become inaccessible to many workers. In 2009, the ACT Government recognised that many Canberrans were disadvantaged by service eligibility requirements to long service leave and established the portable schemes in recognition of this disadvantage.

Inclusion in the portable schemes is determined by the *Long Service Leave (Portable Schemes) Act 2009* which is administered by the Long Service Leave Authority. All employees that meet the defined requirements of the portable schemes are entitled to portable long service leave and employers must register their business and their employees with the authority.

The benefits of portable schemes

Portable schemes were introduced to mitigate inequalities by allowing employees to move between employers in a covered industry without losing long service leave credits for time worked in that industry.

Workforce mobility is high with almost one in five employees employed by their current employer for less than one year.¹ This has led to a relatively low prevalence of long-term employment relationships with around three in four workers working with their employer for less than 10 years (the usual qualifying period for long service leave). This structural trend away from long-term employment is limiting access to long service leave for a large portion of the workforce.

This limitation is particularly pronounced for women. This is because traditionally women disproportionately take on caring responsibilities.² Women who have children are also more likely to take extended (unpaid) breaks from employment³ which hinders accumulation of long service leave benefits.

By recognising and encouraging loyalty and professional development within covered industries, the schemes benefit employees by facilitating sustainable career paths. The schemes in turn benefit employers and consumers by encouraging the retention of skilled workers within the industry.

Research indicates several relevant issues for considering the benefits and disadvantages of portable long service leave schemes. Some of these are outlined in the table below.⁴

¹ Australian Bureau of Statistics, Labour Mobility, Cat. 6209.0 (2012).

² Tanya Carney, 'The Employment Disadvantage of Mothers: Evidence for Systemic Discrimination' (2009) *Journal of Industrial Relations* 51(1), 113-130.

³ Above n 4.

⁴ The information in this table has been adapted for this purpose from source material published by the McKell Institute - https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf

Advantages of portable schemes

Retention of employees Portable schemes help to retain employees in industries with high levels of labour mobility.

Equity Employees in highly casualised or contract roles otherwise have no practical access to long service leave.

Mobility and flexibility Employees have more capacity to move between employers or to take short periods out of employment to meet commitments such as caring responsibilities.

Productivity and work environment The capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work has advantages for boosting productivity and morale.

Employee attraction A benefit for 'good employers' as employees feel less compelled to stay in poorly managed workplaces to meet long service leave eligibility requirements.

Compliance problems reduced Employers pay for entitlements as they accrue.

Cost certainty Greater cost stability is provided to employers because the pay-as-you-go operation limits the potential for employers to accumulate liabilities they cannot pay, for example if they become insolvent or have trading difficulties.

Tax benefits Employers can claim a tax deduction for payment of levies and the portable schemes are not required to pay tax on their investment income.

Potential disadvantages of portable schemes

Administration costs for employers This factor may be pronounced during transitional periods for newly established schemes. However, recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost.

Prefunding impact on business cash flows Smaller employers may provide for long service leave from consolidated revenue as required. Portable schemes require employers to pay as they go.

The McKell Institute Report on *The Case for a National Portable Long Service Leave Scheme in Australia*⁵ sought views about portable long service in Australia and through representations made by employers,

⁵ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf (2013)

employees, and administrators involved in the management of established portable schemes found that generally there were positive views about portable schemes with advantages perceived to outweigh costs

Portable Schemes in the ACT

Broadly speaking, access to long service leave in the ACT is established by either:

- the *Long Service Leave Act 1976* (LSL Act), which provides for the traditional single employer model

or

- the *Long Service Leave (Portable Schemes) Act 2009* (Portable Schemes Act), which maintains leave provisions within more mobile industries (defined industries).

The Portable Schemes Act provides long service leave for employees in defined industries who cannot access long service leave entitlements under the LSL Act as they did not remain with the same employer for a long enough period. It enables employees who choose to remain in defined industries to accrue long service leave entitlements through continuous industry service rather than through service with one employer.

In the ACT employers that have employees covered under a portable scheme must register with the ACT Long Service Leave Authority (LSL Authority) and pay a levy contribution to the authority based on the gross ordinary wages of those employees.

The LSL Authority has a number of functions in relation to portable schemes:

- identify and register employers and employees for each scheme
- maintain records of employees' service under the scheme
- provide registered employees with an annual statement about their long service leave
- maintain records of employer contributions to the scheme
- assess employees' claims for long service leave
- make long service leave payments to employees.

Further [information about the LSL Authority](#) is available on the authority website.

Contractors within defined industries have the option to make their own contributions if they wish to accrue service in a scheme and the benefit is a payment instead of leave.

When an employee decides to claim some or all of their long service leave entitlement, they lodge a claim directly with the LSL Authority and the authority (not the employer) pays the benefit. This is different to liability arrangements under the LSL Act where an employer is required to retain a contingent liability over the duration of employment for all employees, no regular levy is payable and it is up to the employer to administer and ensure funds are available.

Defined industries in the ACT

The currently four defined industries in the ACT which attract coverage from the Portable Schemes Act:

- building and construction
- contract cleaning
- community sector
- security.

Information about the portable schemes for each industry is provided below.



Building and Construction

Building and construction industry employees registered on or after 1 January 1997 are entitled to **13 weeks of long service leave after ten years of recorded service** in the industry and continue to accumulate 1.3 weeks of leave for every year thereafter. The levy for the building and construction industry is currently 2.10 per cent of wages.

Activities performed by employees in this scheme include: construction, renovation, alternation, repair and demolition of building works, roadworks and works for the storage or supply of water.



Contract Cleaning

Contract cleaning industry employees registered on or after 24 June 2000 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry and continue to accumulate 0.867 weeks of leave for every year thereafter. The levy for the contract cleaning industry is currently 1.20 per cent of wages.

Activities performed by employees in this scheme include work that is undertaken for bringing premises into (or maintained as) a clean condition. From 1 July 2016 drivers and sorters for waste management facilities under contract with the ACT Government are also entitled to access the scheme.



Community Sector

Community sector industry employees registered on or after 1 July 2010 are entitled to **4.33 weeks of long service leave after five years of recorded service** in the industry and continue to accumulate 0.867 weeks of leave for every year thereafter. The levy for the community sector industry scheme is currently 1.20 per cent of wages.

Activities performed by employees in this scheme include activities that are carried out under relevant laws or for the purposes of residential aged care or community aged care services. All employees within the industry are covered, for example, the chef and administration staff of a child care centre.



Security

Security industry employees registered on or after 1 January 2013 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry and continue to accumulate 0.867 weeks of leave for every year thereafter. The levy for the security industry scheme is currently 1.07 per cent.⁶

Activities performed by employees in this scheme include activities where work is identified by the relevant law (the *Security Industry Act 2003*) as activities performed by the security industry.

⁶ The ACT Long Service Leave Authority Governing Board appoint an actuary to investigate the state and adequacy of the money of the Authority at least once every three years. This includes whether any reduction or increase is necessary in the rates of levies paid to the Authority by employers or voluntary members.

Identifying new industries for inclusion

Considerations

In July 2020 the ACT Legislative Assembly resolved to:

- work with Hair Stylists Australia, the ACT Hairdressing Industry, employers, employees, employee bodies and registered training organisations to determine how to include hairdressing as a portable scheme

and

- investigate extending portable schemes to other non-public sector industries.

In November 2021, the ACT Legislative Assembly called on the ACT Government to:

- expand portable schemes to the contract catering industry

and

- investigate further industries for inclusion as a portable scheme.

Data on worker mobility released by the Australian Bureau of Statistics, and other data relevant for identifying industry sectors most prone to insecure or transient employment and which would consequently benefit most from portable scheme coverage.

Workforce mobility

In 2020 the Australian Bureau of Statistics released a report into job mobility which indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020⁷. Our analysis shows us that mobility remained highest for professionals at 21.7% with technicians and trades, with clerical and administrative and sales employees reporting a moderate level of mobility.⁸

Across industries, hospitality employees were identified as the most likely to change jobs in 2020, with 14.3 per cent changing their employer or business followed by employees in rental and real estate (11.4 per cent), administrative services (10.5 per cent) and retail trade (9.3 per cent). The report also showed high job mobility rates among community and personal service employees noting that almost 10 per cent had changed employers in the reporting year.

Seven years is the usual qualifying period for access to long service leave in the ACT. This tells us that many people may not stay in continuous employment with the same employer long enough to accrue long service leave entitlements.

⁷ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

⁸ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

Workforce mobility and women

High mobility industries have several things in common including:

- a higher ratio of young people who may experience particular influencing factors that affect their ability to remain with a single employer, such as family and caring responsibilities, study and professional development opportunities and the inherent transient nature of business within these industries themselves
- a higher number of women who, across their working life may move in and out of the workforce for a number of reasons.

Women represent more than 50 per cent of employees in administrative and accommodation and food services, more than 70 per cent of employees in clerical and administration, almost 60 per cent in retail sales and more than 70 per cent in community and personal services. Less than 40 per cent are managers.⁹

Women under the age of 35 represent more than 55 per cent of employees in retail, accommodation and food services industries with women over 45 being almost 60 per cent of these employees. More than 60 per cent of women remain in these industries once they reach 55 years of age.

The labour force participation rate for people with children under five is 65.5 per cent for women compared with 94.4 per cent for men. It can be concluded that women are exiting the workforce to care for children, often leaving before the period of service required for long service leave. When they return to the workforce, often in the same industry, they cannot revive their previous service history.

Potential expansion of portable schemes coverage

We have identified five industries with mobility and security of employment characteristics that align with the principles and intent of portable schemes:

- personal and other services (which includes hairdressing and beauty services)
- accommodation and food services (which includes contract catering)
- rental, hiring and real estate services
- administrative and support services (which includes travel agency services and general administrative support services including labour hire) and
- retail trade¹⁰.

We have used the [Australian and New Zealand Standard Industrial Classification](#) (ANZSIC) to identify types of occupations within these industries. ANZSIC is the standard classification system used in Australia and New Zealand to collect, compile and publish information about the operation of industries. It enables

⁹ <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#data-download>

¹⁰

information about businesses, including employee data, to be grouped by reference to their industry and supports comparisons between industries.

The information below uses ANZSIC to illustrate the types of occupations that might be covered by the portable schemes of coverage was expanded to include one or more of the industry sectors described above.

Personal Care Services (incorporating hairdressing and beauty services)

Possible portable schemes expansion to cover ANZSIC Division S: Personal and Other Services with some exclusions



This classification covers activities and occupations including hairdressing and beauty services and diet and weight reduction services.



Accommodation and Food Services (incorporating contract catering)

Possible portable schemes expansion to all of ANZSIC Division H: Accommodation and Food Services

Occupations in this division have common characteristics and perform similar functions including:

- providing short-term accommodation for visitors
- providing food and beverage preparation services and
- serving of meals and beverages for consumption by customers.

We consider it viable to cover the entire division based on the likelihood of employee mobility across occupations in the division. It is also more likely that employees in occupations in this division may cease employment with one employer due to reasons beyond their control, such as the closure of businesses, but seek to remain within the industry.

To only include Contract Catering Services would only capture a small number of businesses and employees, including a majority of small businesses that may operate alongside employees performing the same services for the same employer. This could increase the inherent disadvantage facing some employees in the food services industry who would otherwise seek to remain within the industry.



Rental, Hiring and Real Estate Services

Possible portable schemes expansion to all of ANZIC Division L: Rental, Hiring And Real Estate Services

This division includes employees mainly engaged in renting, hiring, or otherwise allowing the use of tangible or intangible assets, and employees providing related services.

We consider it viable to cover the entire division because the occupations that make up the division have similar primary activities and rates of mobility across the industry.



Administrative and Support Services

Possible portable schemes expansion to cover ANZIC Division N: Administrative and Support Services with some exclusions

This division includes employees mainly engaged in performing routine support activities for the day-to-day operations of other businesses or organisations.

The activities undertaken by employees in this division are often integral parts of activities found in all sectors of the economy. Recent trends have moved more towards the outsourcing of these activities. Employees in this division mostly specialise in one or more of these activities and can, therefore, provide services to a variety of employers.

We are proposing to exclude building cleaning and pest control or packages services because they do not align with the principles and intent of portable schemes or have workforce mobility considerations as outlined previously.



Retail Trade

Possible portable schemes expansion to cover ANZIC Division G: Retail Trade with some exclusions

This division includes employees mainly engaged in the purchase and/or on selling, the commission-based buying, and the commission-based selling of goods, without significant transformation, to the general public. It also includes employees that purchase and on-sell goods to the general public using non-traditional means, including the internet.

Because the majority of roles within retail trade align with the principles and intent of portable schemes and have a relatively high degree of mobility we propose minimal exclusions for non-store retailing and retail commission-based buying. Our understanding is that these employees do not experience similar mobility or vulnerability as others in this division.

From: "Lukins, Ellen"
Sent: 19/05/2022 6:52 AM
To: "Savage, Tracy (ACT LSA)" <Tracy.Savage@actleave.act.gov.au>
Subject: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper
Attachments: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper.docx

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From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 13/07/2022 11:26 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: CM22 69463 Attachment A_Stakeholder Engagement Presentation_LSL Portable Schemes
Expansion.pptx
Attachments: CM22 69463 Attachment A_Stakeholder Engagement Presentation_LSL Portable Schemes
Expansion.pptx

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Hi

A cut back version of the slideshow for today – see what you think

Long Service Leave

- Long service leave entitlements exist for workers under either the:
 - *Long Service Leave Act 1976* – providing a general access to long service for a recognised period of service with the same employer; or
 - *Long Service Leave (Portable Schemes) Act 2009* – providing for access to long service leave that may be ported from employer to employer for recognised service in a covered industry
- Portable long service leave schemes have operated since the early 1980s, with the ACT having the broadest coverage:
 - building and construction
 - security,
 - cleaning and
 - community sector.

Reform agenda

- The ACT Government has set out a progressive reform agenda to deliver secure work in the Territory.
 - *Parliamentary and Governing Agreement for the 10th Legislative Assembly*, commits to “*amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession*”.
- Resolutions of the ACT Legislative Assembly calling on the ACT Government to:
 - July 2020 – to.... include the hairdressing industry in the *Long Service Leave (Portable Schemes) Act 2009* and investigate extending the LSL Portable Schemes to other non-public sector industries
 - November 2021 – expand the LSL Portable Schemes to include the contract catering industry; and investigate further industries for inclusion in the LSL Portable Schemes such as the hospitality industry

Reform agenda

- Overarching objectives:
 - improving conditions for vulnerable and insecure workers
 - ensuring clarity of the objectives the PLSL Schemes, its coverage and definitions
 - ensuring the sustainability of the administration of the PLSL Schemes.
- Equity of access to long service leave:
 - transient workforces/ mobility of employees
 - workforce composition and diversity of an industry
 - Sectors prone to:
 - part-time/casual employees
 - short term contracts
 - Higher proportion of female employees.

Reform agenda

- To consider expansion to some industries, specifically:
 - hairdressing and
 - contract catering.
- To take the opportunity to consider expansion to other broader industries:
 - personal care services (including hairdressing/beauty services)
 - accommodation and food services (includes contract catering)
 - rental, hiring and real estate industry
 - administrative support services
 - retail trade.
- To consider consistency across existing and new schemes:
 - Scope of coverage - based on workers being employed by an employer in a covered industry, and performing work in that covered industry
 - Definition of new industries, recognised service and the accrual of entitlements.

Mobility of employment

- 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020. (2020 has been used as later periods impacted by COVID-19)
 - hospitality 14.3%
 - rental and real estate 11.4%
 - administrative services 10.5%
 - retail trade 9.3%.

Entitlements under existing schemes

Building and Construction

Building and construction industry workers registered on or after 1 January 1997 are entitled to **13 weeks of long service leave after ten years of recorded service** in the industry, and continue to accumulate 1.3 weeks of leave for every year thereafter. The applicable levy for the building and construction industry is currently 2.10 per cent.

Contract Cleaning

Contract cleaning industry workers registered on or after 24 June 2000 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the contract cleaning industry is currently 1.07 per cent.

Community Sector

Community sector industry workers registered on or after 1 July 2010 are entitled to **4.33 weeks of long service leave after five years of recorded service** in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the community sector industry scheme is currently 1.60 per cent.

Security

Security industry workers registered on or after 1 January 2013 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the security industry scheme is currently 1.07 per cent.

Questions for consideration/discussion

- Occupations/industries suitable for coverage?
- Possible barriers or impediments to expansion?
- Entitlement levels?
- Total sector vs occupational coverage?
- Discussion paper:
https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0006/2013765/Portable-Long-Service-Leave-Expansion-Consultation-Paper-June-2022.pdf

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 24/12/2020 1:27 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: Draft Discussion Paper - Long Service Leave (Portable Schemes) Hairdressers
Attachments: Long Service Leave (Portable Schemes) Discussion Paper_Hairdressers - Draft v1.docx

UNOFFICIAL

Hi Ellen

Please find attached an early draft Long Service Leave Portable Schemes- Hairdressers Discussion Paper.

I look forward to reviewing, discussing and progressing this work when we're back in the office.

Hope you have a fantastic Christmas, New Year and well deserved break.

Kind regards

Teo

Teo Findlay | Assistant Director

Phone: 02 6205 2835 | Email: teo.findlay@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

GPO Box 158, Canberra, ACT 2601 | www.act.gov.au

CONTENTS

INTRODUCTION3

MAKING A SUBMISSION3

ISSUES FOR DISCUSSION3

BACKGROUND4

 ACT Government Motion 4

 Previous reviews of the Portable Long Service Leave Schemes legislation5

 Hairdressers by worker class (ANZSIC Code 9511 – Hairdressing and Beauty Services Industry)5

 Exclusions/References 5

 The ACT Hairdressing and Beauty Services Industry Profile.....6

 Financial Obligations6

 Heading 2..... 7

 Heading 3 7

 Heading 4 7

..... 8

INTRODUCTION

The ACT Government has committed to protecting local jobs, and in doing so, ensuring more workers receive fair entitlements as they move jobs in their profession.

The Government has undertaken to support fair working conditions for Canberrans and ensure workers receive fair entitlements by reviewing the Territory's long service leave scheme.

In July 2020 that ACT Legislative Assembly passed a motion calling on the ACT Government to:

- a) work with Hair Stylists Australia, the ACT hairdressing industry employers, employees, employee bodies and registered training organisations to determine how to include the hairdressing industry in the *Long Service Leave (Portable Schemes) ACT 2009*; and
- b) investigate extending the *Long Service Leave (Portable Schemes) ACT 2009* to other non-public sector industries.

This motion was agreed to in the Legislative Assembly with the then Minister for Employment and Workplace Safety, Suzanne Orr MLA, agreeing to:

“request that directorate officials begin a process of consultation with the authority, employers, workers and their representatives on the question of whether and how to establish portable long service leave for hairdressers in the ACT”.

MAKING A SUBMISSION

The discussion paper has been developed for the purpose of seeking views on the *Long Service Leave (Portable Schemes) ACT 2009* being expanded to include the Hairdressing and Beauty Services Industry, specifically on issues such as scope and coverage.

All submissions received may be published unless provided in confidence. Material provided in confidence should be clearly marked 'IN CONFIDENCE'. For submissions received from individuals, all personal details (for example, home and email address, signatures, phone, mobile and fax numbers) will be removed for privacy reasons before being published.

Your submission can be emailed to wsir@act.gov.au or sent to:

Regulatory Policy
Workplace Safety and Industrial Relations Division
GPO Box 158
Canberra City ACT 2601

The Closing Dates for submissions is XX February 2021

ISSUES FOR DISCUSSION

How should the hairdressing industry be defined?

Should the hairdressing and beauty industry be defined as ANZSIC Code 9511, or should it be defined by other means? If the industry is to be defined by other means, please identify how the industry could be defined.

Should the portable long service leave schemes be expanded to include the hairdressing and beauty services industry?

BACKGROUND

The *Long Service Leave (Portable Schemes) Act 2009* (the Act) provides portable long service leave for designated workers within four industries in the ACT: the Building and Construction Industry; the Contract Cleaning Industry; the Community Sector Industry; and the Security Industry. Employers operating in the covered industries in the ACT must register with the ACT long Service Leave Authority (the Authority).

The portability of long service leave entitlements for these industries allows workers (employees and contractors) to accumulate long service leave entitlements based on their length of service in a particular industry, rather than their length of service with a single employer.

Registered employers within each industry pay a quarterly levy to the Authority to fund the long service leave entitlements of workers under the portable schemes. The Authority maintains separate funds for each portable scheme and registers of employers and employees for each scheme.

Under the direction of the Governing Board (the Board), the Authority regulates and administers the portable schemes, including the conduct of education, compliance, and enforcement activity.

The Board is composed of employer and employee representatives and independent members and is responsible for the making of recommendations to the Minister about the determination of levies, determining minor changes to levies, making recommendations about the declaration of corresponding laws and any other function given under the Act or another Territory law, including the review of certain decisions made by the Registrar of the Authority.

ACT Government Motion

On 30 July 2020 the ACT Legislative Assembly passed a motion calling for the Government to:

- (a) work with Hair Stylists Australia, the ACT Hairdressing Industry, employers, employees, employee bodies and registered training organisations to determine how to include hairdressing in the *Long Service Leave (Portable Schemes) Act 2009*; and
- (b) investigate extending the *Long Service Leave (Portable Schemes) Act 2009* to other non-public sector Industries.

This motion was agreed to in the Assembly with the Minister for Employment and Workplace Safety, Suzanne Orr MLA agreeing to:

“request that directorate officials begin a process of consultation with the authority, employers, workers and their representatives on the question of whether and how to establish portable long service leave for hairdressers in the ACT”.

ACT Labor and the ACT Greens have set out an ambitious legislative reform agenda over the coming term. Priority reform areas include, amendments to the *Long Service Leave (Portable Schemes) Act 2009* to ensure more workers receive fair entitlements as they move jobs in their profession (sector/industry).

Long service leave is an important reward for an employee’s service. It is an entitlement the ACT Government believes all workers should have the opportunity to access. However, modern contract and project-based employment arrangements have meant that, due to circumstances, workers in some industries have been unable to accumulate or access long service leave entitlements.

This may occur for example where an employer’s contract to provide a service to a client is terminated, and a new contract for the same service is entered into with a new employer. A worker engaged in the delivery of that service would quite often continue to undertake work in that industry with a different employer.

Portable long service leave for service within these industries encourages workers to continue to contribute their skills and experience within the industry and provides them with employment security.

Access to long service leave entitlements not only benefits workers, it also benefits employers by providing an incentive for employees to continue working in a covered industry.

Previous reviews of the Portable Long Service Leave Schemes legislation

Consideration has previously been given to the inclusion of hairdressing and the nursing sector within the portable long service leave schemes. However, they have not been pursued.

With regard to the hairdressing industry, it was not previously considered compatible with the current portable long service leave schemes due to the percentage of the workforce falling within small employers.

In 2016 the Governing Board of the ACT Long Service Leave Authority, with assistance from officers from the Workplace Safety and Industrial Relations Division (Chief Minister, Treasury and Economic Development Directorate) undertook a review of the operation of the portable schemes legislation.

The nursing sector was not considered suitable for inclusion on the basis that:

- many nurses would already be covered due to their employers falling under the existing community sector industry scheme;
- wider application of the scheme to nurses generally would capture diverse multi occupational employers such as hospitals, general practitioners and allied health services;
- a broader application to nurses would impose a significant administrative burden on those employers.

Hairdressers by worker class (ANZSIC Code 9511 – Hairdressing and Beauty Services Industry)

This class consists of workers mainly engaged in providing hairdressing services or providing beauty services such as nail care services, facials or applying make-up.

Primary activities:

- Barber shop operation
- Beauty service
- Electrolysis service
- Hair restoration (except hair transplant service)
- Hairdressing service
- Make-up service
- Nail care service
- Skin care service
- Tanning (solarium) service

Exclusions/References

Workers mainly engaged in providing medical skin care services such as cosmetic surgery and dermatological services, or in providing medical or surgical hair replacement or transplant services, are included in Class 8512 Specialist Medical Services.

The ACT Hairdressing and Beauty Services Industry Profile

In relation to the hairdressing and beauty services industry, a review of workers' compensation data indicates there are approximately 239 registered ACT base employers with a total of 1344 workers in the hairdressing and beauty services industry in the Territory, which in 2018-19 (most recent workers' compensation data) comprised:

- 123 small businesses (less than 5 employees) – with approximately 301 workers;
- 77 medium businesses (between 5 and 9 employees) – with approximately 479 workers; and
- 39 large businesses (10 or more employees) – with approximately 564 workers.

This data uses the ANZSIC Code 9511 – *Hairdressing and Beauty Services*.

From this date it is clear the majority of the sector is smaller micro businesses where:

- approximately 80% of employees have 9 or less workers and make up 58% of the workforce; and
- while categorised as large businesses, the average number of workers per business in this category is approximately 14 workers.

Financial Obligations

Long Service Leave (Portable Schemes) 2009

Under the portable schemes employers must register workers with the Authority and pay a levy contribution to the Authority (i.e. the determined percentage of the gross ordinary wages of those employees). The levies and entitlements vary across the four industries. Below is a table of the current levies and entitlements under the Portable Schemes Act as at December 2020.

| Industry Scheme | Levy | Leave Entitlement | Recorded Service | Registration Date |
|------------------------------------|-------|-------------------|------------------|-------------------|
| Building and Construction Industry | 2.1% | 13 weeks | 10 years | 1 January 1997 |
| Contract Cleaning Industry | 1.2% | 6.06 weeks | 7 years | 24 June 2000 |
| Community Sector Industry | 1.2% | 4.33 weeks | 5 years | 1 July 2010 |
| Security Industry | 1.07% | 6.06 weeks | 7 years | 1 January 2013 |

The levies are held by the Authority in separate trusts according to industry and released upon application from an eligible employee.

Long Service Leave Act 1976

Under the *Long Service Leave Act 1976* (the 1976 Act) an employee is entitled to long service leave after completing 7 years' service with a single employer, for the period of the service. Under the 1976 Act, an employee accrues long service leave at the rate of 1/5 of a month's leave for each year or service.

$$\frac{(1/5 \times \text{The amount of continuous service in years}) \times 52}{12} = \text{Amount of leave in weeks}$$

For full time employees, payment for long service leave is made at the rate of an amount equivalent to the ordinary remuneration the employee would have received in respect of the period of leave if they had not taken the leave.

Ordinary remuneration x weeks entitlement = Amount of Long Service Leave

Example: \$560.00 (ordinary remuneration) x 6.0667 (weeks entitlement for seven years) = \$3397.35

An employer is required to ensure that a contingent liability is retained over the durations of the employment, to allow for adequate funds to pay the employees long service leave entitlements should they remain with the employer for 7 years. There is, however, no regular levy paid under this legislation and it is up to the employer to administer.

From: "Lukins, Ellen"
Sent: 22/01/2021 4:40 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: FW: Draft Discussion Paper - Long Service Leave (Portable Schemes) Hairdressers
Attachments: Long Service Leace (Portable Schemes) Discussion Paper_Hairdressers - Draft v1.docx

UNOFFICIAL

Here it is 😊

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



Important: This message may contain confidential or privileged information. If you are not the recipient of this message, you are hereby notified that you must not disseminate, copy or take any action based upon it. If you think this was sent to you by mistake, please delete all copies and advise the sender immediately.

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 30/04/2021 6:13 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: Long Service Leave Portable Schemes - Internal Briefing - Revised timeline - Proposed Industries/Occupations for Expansion
Attachments: CMTEDD-Internal-Minute (3).docx

UNOFFICIAL

Hi Rebecca

By the time you see this it might be [Sch 2.2\(a,m\)](#).

Please find attached a draft brief outlining a revised timeline for the long service leave portable schemes project, as well as proposed target expansion groups.

Apologies for sending this so late on a Friday afternoon. Although it has been a crazy week, I could have managed this a bit better.

Again, thank you for your time this afternoon. It really is appreciated.

Speak Monday.

Kind regards

Teo

CMTEDD INTERNAL MINUTE



ACT
Government

Chief Minister, Treasury and
Economic Development

Date _____ TRIM No: _____
File No: _____

To _____
Executive Group Manager, Workplace Safety and Industrial Relations

From _____
Senior Director, Regulatory Policy

Subject _____
Long Service Leave (Portable Schemes) Act 200

Critical date and reason

1. To adjust the project timeline for the consultation and proposed amendments to the *Long Service Leave (Portable Schemes) Act 2009*.

Recommendations

2. That you:
 - agree to the revised project timeline for consultation and proposed amendments to the *Long Service Leave (Portable Schemes) 2009*, and;
 - agree that a second stage consultation paper be drafted to investigate expansion of the *Long Service Leave (Portable Schemes) 2009* to the industries set out in this brief.

Michael Young..... / /
AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. The Parliamentary and Governing Agreement for the 10th Legislative Assembly provides that the Government will “*amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession.*”
4. In July 2020 the ACT Legislative Assembly passed a motion calling on the ACT Government to:
 - a. work with Hair Stylists Australia, the ACT hairdressing industry, employers and employees, employee bodies and registered training organisations to determine how to include the hairdressing industry in the *Long Service Leave (Portable Schemes) Act 2009* (LSL Portable Schemes Act); and
 - b. investigate extending the LSL Portable Schemes Act to other non-public sector industries.

Issues

5. The Minister for Industrial Relations and Workplace Safety agreed to conduct two stages of external consultation to investigate the expansion of the LSL Portable Schemes Act.
6. A timeline was developed outlining the milestones for consultation and subsequent amendments ([CMTEDD2021/559](#)). However, the Stage 1 targeted consultation with hairdressing industry stakeholders has not been released to stakeholders.
7. As a result, we recommend the timeline for consultation and subsequent amendments be adjusted accordingly. The following table outlines the proposed revised timeline.

| Milestones | Completion Date |
|---------------------------------------------------------------------------------------------|-----------------|
| 1. Consultation with the Long Service Leave Authority | Ongoing |
| 2. Stage 1: targeted consultation with hairdressing industry stakeholders (approx. 6 weeks) | May 2021 |

Sch 1 1.6

Sch 1 1.6

8. The Australian Bureau of Statistics (ABS) 2020 report into job mobility indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020.¹
9. Mobility remained highest for professionals, at 21.7% for the year ending February 2020, and 21.1% for the year ending 2019. There was a considerable increase in mobility reported by managers, increasing by 19.7% (18,200 people) to the year ending February 2020.²

| | Year ending Feb-19(%) | Year ending Feb-20(%) |
|---------------------------------------------------|--------------------------|--------------------------|
| Professionals | 21.1 | 21.7 |
| Technicians and trades workers | 15.0 | 13.5 |
| Clerical and administrative workers | 10.7 | 10.9 |
| Sales workers | 9.1 | 10.3 |
| Labourers | 9.5 | 7.7 |
| Community and personal service workers | 10.8 | 9.8 |
| Managers | 8.6 | 10.5 |
| Machinery operators and drivers | 5.5 | 6.5 |
| Not working at last February | 9.6 | 9.0 |

¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

² <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

Source: Australian Bureau of Statistics, Participation, Job Search and Mobility, Australia February 2020

10. There is no national data on labour turnover rates for Australia. However, the Australian Industry Group (Ai Group) has published data (sourced from the ABS) providing workers 'duration of continuous employment in current business'.³
11. According to the Ai Group publication, in the year to February 2019, a total of 1.98 million people ceased a job during the year, with the single most common reason being 'wanting to obtain better job conditions or wanting a change'.
12. Across industries, hospitality workers were the most likely to change jobs in the year to February 2019, with 17.9% changing their employer or business, followed by workers in rental and real estate (11.7%), administrative services (11.3%), and Utilities 10.7%. While, across occupations, sales workers were the most likely to change jobs in the 12 months to February 2019.
13. Accordingly, it is proposed a second stage discussion paper be developed investigating expansion of the LSL Portable schemes Act to the industries and occupations at paragraph 13 of this briefing.

Scheme design

14. A worker who (a) is employed by an employer within a covered industry; *and* (b) performs work in that covered industry, is entitled to long service leave in line with the schedule for that industry. This two-tiered approach permits the Act to cover specific functional roles within an industry. For example, the security industry scheme applies only to workers who carry out designated 'security activities' (defined under the *Security Industry Act 2003*), rather than all workers in the industry.
15. This has been done in three out of the four covered industries. However, the definition of community sector work is intentionally broad so that *all* roles within the community sector industry are covered. The policy intent behind this particular scheme is to promote greater retention in the community sector as a whole, given the high staff turnover in that industry as well as the high social return on investment from community sector work.⁴
16. In considering expanding the LSL Portable Schemes Act, we recommend a classification framework for organising data about businesses by grouping business units carrying out similar activities be used.

³<https://www.aigrouptalent.com.au/wp-content/uploads/Ai-Group-factsheet-Labour-Turnover-in-2019.pdf>

⁴ ACT Council of Social Services, *Australian Community Sector Survey*, ACOSS Paper 173, (Vol 3, 2011), available at: <http://acoss.org.au/images/uploads/ACSS_Report_Volume_3_New_South_Wales.pdf>.

17. The ABS uses Australian and New Zealand Standard Industrial Classification (ANZSIC) in most of its economic collections and for compilation of the national accounts. A wide range of other users from government, academia and the private sector use the ANZSIC for financial, administrative and statistical purposes.

18. Accordingly, for ease of administration, we recommend the use of a similar model or framework for classification and grouping of industry and occupations.

Commented [FT2]: Hoping we can book in some time to discuss refining this. I don't want to use ANZSIC but would like to settle on defining a model and this not been something I have reached have settled on.

Consultation

19. Nil.

Work Health and Safety

20. Nil.

Financial

21. Nil.

Risks/ Sensitivities

22. Nil.

Media

23. Nil.

Ellen Lukins

Action Officer: Rebecca Sullivan

Phone: 02 6205 8353

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 03/06/2021 3:03 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: LSL Portable Schemes - EGM Brief
Attachments: PLSL - BRF to EGM WSIR - TF Edit.docx, Attachment A_Option Timelines.docx, Attachment B - ABS Job Mobility.docx, Attachment C_Labour Turnover in 2020 Fact Sheet.pdf

UNOFFICIAL

Hi Rebecca

I have done some work on this in line with your comments/feedback and our discussions. It would be great if you could have a look and let me know if we're heading in a direction you are comfortable with.

Kind regards

Teo

Teo Findlay | Assistant Director
Phone: 02 6205 2835 | Email: teo.findlay@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra, ACT 2601 | www.act.gov.au

CMTEDD INTERNAL MINUTE



ACT
Government

Chief Minister, Treasury and
Economic Development

Date _____ TRIM No: _____
 File No: _____

To _____
 Executive Group Manager, Workplace Safety and Industrial Relations

From _____
 Senior Director Regulatory Policy, Workplace Safety and Industrial Relations

Subject _____
 Proposed amendments to the Long Service Leave (Portable Schemes) Act
 2009

Critical date and reason

1. To adjust the project timeline and scope for proposed amendments to the *Long Service Leave (Portable Schemes) Act 2009* to address the Assembly Motion of 30 July 2020.

Recommendations

2. That you:
 - note the project complexities and dependences within this brief;
 - agree to the revised project timeline for consultation and proposed amendments to the *Long Service Leave (Portable Schemes) 2009*, and;
 - agree that a second stage consultation paper be drafted to investigate expansion of the *Long Service Leave (Portable Schemes) 2009* on the basis of the scope set out in this brief.

Michael Young..... / /
AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Commented [SR1]: let's discuss – I know that we are operating on the basis that we are still having two papers, but I think we should be definitive and put up the option (one or two) and get the sign off

See the comments below re Recommendations

Background

1. The *Parliamentary and Governing Agreement for the 10th Legislative Assembly* provides that the Government will “*amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession*”.
2. In July 2020 the ACT Legislative Assembly passed a motion calling on the ACT Government to:
 - a. work with Hair Stylists Australia, the ACT hairdressing industry, employers and employees, employee bodies and registered training organisations to determine how to include the hairdressing industry in the *Long Service Leave (Portable Schemes) Act 2009* (LSL Portable Schemes); and
 - b. investigate extending the LSL Portable Schemes to other non-public sector industries.
3. In response to the Assembly’s motion, the Regulatory Policy Team, Workplace Safety and Industrial Relations (WSIR), developed a project plan to articulate the purpose, priority, methodology and timeframe necessary to deliver against requirements. The project was developed on the basis of a two-stage consultation process, following agreement by the Minister.
4. In March 2020 the Regulatory Policy Team developed a targeted consultation paper directed to key stakeholders associated with the hairdressing industry. The consultation paper was deliberately narrow in scope, and was designed to facilitate discussion on the scope of the hairdressing industry, for inclusion under the LSL Portable Schemes.
5. The Regulatory Policy Team understands that in response to an early release of the consultation paper, the ACT Long Service Leave Governing Board (Board) advocated for a broader definition of the industry, suggesting the use of the ANZSIC classification for ‘hairdressing and beauty services’. The use of the ANZSIC classification, as suggested, would expand coverage of the proposal to a broader range of employers and employees.
6. However, consideration for an expanded industry definition does not fit neatly within the intended purpose of the first consultation paper.
7. The Regulatory Policy Team is mindful of the ACT Government’s commitment to ensuring that as far as practicable, all workers can access long service leave entitlements. This includes workers in non-traditional industries, where the nature of the industry means that employer flexibility and mobility is required to meet the needs of a sector.

Commented [FT2]: And allow for ease of administration as workers compensation data is collected by the Territory for workers under each ANZSIC industry classification

8. The Regulatory Policy Team is further mindful about the lapse of time between the Assembly motion and the successful delivery of a consultation process to inform the direction of the project recommendations and outcomes.

Issues

Options for Project Approach and timeline

9. In response to the Assembly motion, the Minister for Industrial Relations and Workplace Safety agreed to conduct two stages of external consultation to investigate the expansion of the LSL Portable Schemes.
10. The staged consultation approach was designed to:
 - a. validate our policy approach in understanding the characteristics of the hairdressing industry; and
 - b. inform a subsequent discussion paper for investigating broader industry inclusion under the LS Portable Schemes.
11. A timeline was developed outlining the milestones for consultation and subsequent amendments (CMTEDD2021/559). However, the stage one targeted consultation with hairdressing industry stakeholders has not been released to stakeholders in accordance with the proposed timeline.
12. As a result, we recommend the timeline and project approach for consultation and subsequent amendments be adjusted accordingly.
13. There are two options for your consideration.

Option 1

14. Option one retains the original project approach of a two staged consultation process. The benefits of option one are:
 - a. addresses motion to the assembly and affords stakeholders an opportunity to provide views on the proposal to include the hairdressing industry (as defined in the stage one consultation paper) under the LSL Portable Schemes.
 - b. provides the Minister an opportunity to announce the Government has consulted with the key stakeholders and would be expanding the LSL Portable Schemes to cover the hairdressing industry.
 - c. allows the Minister to announce the Government will be investigating expansion of the LSL Portable Schemes to other non-public industries at the earliest opportunity.

The disbenefits of retaining this approach include:

- a. if submissions received from stakeholders provide evidence that the hairdressing industry should be defined more broadly (ANZSIC 9511) the stage one consultation could attract criticism and negative media attention, making it difficult to proceed to a second stage consultation process and

deliver on the Government's commitment to expand the LSL Portable Schemes to other non-public sector industries.

- b. the consultation paper prepared to investigate expansion of the LSL Portable Schemes to a narrowly defined hairdressing industry may attract criticism from stakeholders with respect to how the industry has been defined in that paper.
- c. the stage one paper does not include the entire ANZSIC class 9511. This may appear to stakeholders that cohorts of workers forming part of the industry have been arbitrarily excluded, without due consideration of the Territory's entire hairdressing and beauty services industry, and worker mobility rates across the entire industry.
- d. The stage one model, if introduced in its current form, would create administrative complexity for the ACT Long Service Leave Authority (Authority) and businesses.
- e. Coverage of part of an industry may be difficult to regulate as businesses will often employ workers that perform functions in a hairdressing work environment, where some of these functions would be covered under the expanded LSL Portable Schemes, while others may not be covered, as we have seen for businesses such as the Sch 2 2(a)(ii)

Sch 1 1.6

Option Two

16. Option two accommodates the suggested expanded approach by the Board and allows a compressed timeframe for delivery.

Benefits:

- a. a single approach to investigating expansion of the LSL Portable Schemes to non-public sector industries with high rates of worker mobility.
- b. reduces opportunities for criticism/adverse responses from stakeholders opposed to expanding the LSL Portable Schemes.
- c. allows for faster passage of legislative amendments.
- d. Reduces any influence of stakeholder submissions in response to the stage one consultation paper suggesting government need to revise its definition of hairdressing industry
- e. allows for a definition of the hairdressing and beauty service (ANZSIC 9511 – as preferred by the Board) to be consulted on, and included in amendments without prior media attention or criticism from employer representatives/industry and employers.

Risk associated with option two include:

- a. does not provide the early an opportunity for the Minister to announce the expansion of the LSL Portable Schemes to include the hairdressing industry.

b. would likely see the project close with amendments planned for introduction to the Assembly for consideration, before the end of 2021.

19. A timeline for each of the options posed options is at (Attachment A) for your consideration.

20. In considering the benefits and risks to both options, the Regulatory Policy Team recommend Option 2 on the basis that:

Commented [SR3]: Recommendation 1

20. A single consultation process with a consistent approach to classification of industries – based on ANZSIC classification system would be in line with the preferred approach of the Board.

Commented [FT4]: In conversations has EL indicated he Minister's Office preference is for ANZSIC also?

21. Reduces the likelihood of stakeholder criticism in response to the Government's approach to stage one industry classification.

22. Allows the Regulatory Policy Team the opportunity, through use of ANZSIC classifications, to gain insight into the number and size of businesses in the proposed industries in the Territory, and provides an evidence base for the inclusion and exclusion of worker classes for any proposed expansion of the LSL Portable Schemes.

Proposed Scheme design

23. Prior to the introduction of the Territory's portable long service leave schemes, many workers were ineligible for leave entitlements under the *Long Service Leave Act 1976* as they did not remain with the same employer for a long enough period. The introduction of the portable schemes has enabled more workers to receive long service leave for their service to their industry.

24. The primary objective of the PLS Scheme is to establish a legislative framework that supports worker access to long service leave entitlements on the basis of industry service, recognising that some industries are dependent upon mobility and flexibility for growth and professional advancement.

25. To this effect, WSIR has concentrated on identifying industries with recognisable mobility factors, in addition to the hairdressing industry nominated by the Assembly motion.

Mobility

26. The Australian Bureau of Statistics (ABS) 2020 report into job mobility indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020.¹

¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

27. High level analysis on available data, shows us, that mobility remained highest for professionals, at 21.7% with technicians and trades, clerical and administrative and sale workers reporting a moderate level of mobility in comparison.^{2]}
28. Analysis at (Attachment B) represents the available ABS job mobility data.
29. The Australian Industry Group (Ai Group) has published data (cited as sourced from the ABS) providing workers 'duration of continuous employment in current business'.³
30. According to the AI Group publication Labour Turnover in 2020 (Attachment C), in the year to February 2020, a total of 1.1 million people ceased a job during the year, with the single most common reason being 'wanting to obtain better job conditions or wanting a change'.
31. Across industries, hospitality workers were the most likely to change jobs in the year to February 2020, with 14.3% changing their employer or business; followed by workers in rental and real estate 11.4%; administrative services 10.5%; Retail Trade 9.3%; and Professional Services 9.2%.
32. Based on these two data sources, WSIR proposes to extend investigation of the expansion of the LSL Portable schemes to the:
- hospitality industry;
 - rental and real estate industry;
 - administrative service industry;
 - professional services industry; and
 - retail trade Industry.
33. The Regulatory Policy Team has had preliminary discussions with the Data and Analytics Team (WSIR). Discussions indicate, through analysis of workers' compensation data, and access to further broken-down ABS data, it would be possible to establish the number of businesses, the number of workers, and potentially, the rates of worker mobility across the proposed industries.
34. This approach would provide an evidence base for establishing what ANZSIC classifications to include and exclude in a discussion paper addressing expansion

Commented [SR5]: sorry if I've messed up the footnotes, please reinstate or move to the attachment as appropriate.

² <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

³ <https://www.aigrouptalent.com.au/wp-content/uploads/Ai-Group-factsheet-Labour-Turnover-in-2019.pdf>

of the LSL Portable Schemes to the hairdressing industry, and other non-public sector industries contained in this brief.

Defining Coverage of Industries

35. ANZSIC Classifications are set out in Divisions where an industry is made up of several industry classifications. As a result of this structure there are complexities around the scope of certain industries. For example, the hospitality industry, under the ANZSIC classification system, would be made up of a number of different industry classes within that division. This would also be the case for other industries to be considered for expanded coverage under the LSL Portable Schemes.
36. A major consideration in finalising a framework for classifying industries or occupations to which we may expand the LSL Portable Schemes to, is the data available to support a case for expansion of the LSL Portable Schemes.
37. By accessing data from the Data and Analytics Team, the Regulatory Policy Team could determine the ANZSIC classifications to be included and excluded in the proposed expansion of the LSL Portable Schemes.
38. Accordingly, for ease of administration, it would be necessary to settle on a classification framework that does not capture worker cohorts that do not have high rates of mobility across an industry, or exclude classes of workers that have high rates of mobility across an industry.
39. As such, we recommend a classification framework for organising data about businesses by grouping business units carrying out similar activities be used.
40. The ABS uses Australian and New Zealand Standard Industrial Classification (ANZSIC) in most of its economic collections and for compilation of the national accounts. A wide range of other users from government, academia and the private sector use the ANZSIC for financial, administrative and statistical purposes.
41. Whether an industry is defined by ANZSIC Classification or ANZSCO Classification there may be classes of workers that have high rates of mobility, while others under the same ANZSIC or ANZSCO Division may have low rates of mobility. Published data identifying rates of mobility is very limited and not available to the level required to provide evidence of mobility across industries.
 - The Australian and New Zealand Standard Industrial Classification (ANZSIC) is the standard classification used in Australia and New Zealand for the collection, compilation and publication of statistics by industry.

- Australian and New Zealand Standard Classification of Occupations (ANZSCO) is a skill-based classification of occupations, developed as the national standard for organising occupation-related information for purposes such as policy development and review, human resource management, and labour market and social research. The classification includes all jobs in the Australian workforce.
42. Capturing parts of industry classes where workers are mobile can provide access to equitable entitlements for those workers. However, including worker classes from the same industry class, where there are low levels of worker mobility, may impose cost and administrative burden on businesses that is not justified given the profiles of their work force.
 43. For example, the ABS Participation, Job Search and Mobility, Australia data provides that the highest rate of mobility across industries was for professionals at 20.1% for the year to February 2020.⁴ As an example of the complexity in defining an industry, ANZSIC includes professionals under Division M (Professional, Scientific and Technical Services).
 44. In considering expansion of the LSL Portable Schemes to Professionals, an approach to defining the industry, such as using ANZSIC classifications would be necessary. However, expanding the schemes to include Division M would potentially include worker classes that do not have high rates of mobility.
 45. For example, ANZSIC Division M, which includes Legal Services and Accounting Services may have high rates of mobility. However, Division M also includes Scientific Testing and Analysis Services and Engineering Design and Engineering Consulting Services. An assumption could be made that this worker class does not have high rates of worker mobility. However, evidence to support Scientific Testing and Analysis Services and Engineering Design and Engineering Consulting Services not having high rates of mobility is not available. Therefore, expansion to part of an industry and exclusion of other parts of that same industry on the basis of an assumption, would be difficult to justify.
 46. Our preliminary thinking in investigating the expansion LSL Portable Schemes to non-public sector industries is to expand to industries in line with the ANZSIC classification framework. However, this would require examination grounds for the inclusion or exclusion of certain classes of workers that comprise the proposed industries.

⁴ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

47. The regulatory policy team is currently examining the ANZSIC and ANZSCO classes under the proposed industries. Preliminary discussions with the Data and Analytics Team in WSIR indicates further detail may be available relating to the profiles of these industries in the Territory through analysis of workers' compensation data. This would include number and size of businesses and number of employees in each industry.

Commented [FT6]: Considering where this sits in the structure of the paper for flow?

48. Given the data relating to mobility of workers across industries is limited, we recommend the scope of stage two consultation be broad i.e. consultation is proposed for the ANZSIC classification level, to seek feedback from key stakeholders to provide evidence and demonstrate the rates of mobility of workers undertaking work across whole of the industries proposed for investigation at paragraph 13 of this brief.

Commented [SR7]: recommendation 3 – that we start off at ANZSIC level within the broadly defined industries proposed above

legislative scheme design

49. Expansion of the LSL Portable Schemes to non-public sector industries is a completely new initiative, and one that has not been introduced in any other jurisdiction. Currently, non-public sector industries in the ACT are entitled to long service leave under the *Long Service Leave Act 1976* (the 1976 Act) and are unable to transfer accumulated leave if they change employers within the industry.

50. Under the LSL Portable Schemes, a worker who (a) is employed by an employer within a covered industry; *and* (b) performs work in that covered industry, is entitled to long service leave in line with the schedule for that industry. This two-tiered approach permits the Act to cover specific functional roles within an industry. For example, the security industry scheme applies only to workers who carry out designated 'security activities' (defined under the *Security Industry Act 2003*), rather than all workers in the industry.

Commented [SR8]: on final read, can we be consistent in our references please – either spell out, or shorten, not fussed about which

51. This has been done in three out of the four covered industries. However, the definition of community sector work is intentionally broad so that *all* roles within the community sector industry are covered. The policy intent behind this particular scheme is to promote greater retention in the community sector as a whole, given the high staff turnover in that industry as well as the high social return on investment from community sector work.⁵

52. Given the two current forms of design within the LSL Portable Schemes, we recommend any expansion of the schemes be consistent and based on workers

⁵ ACT Council of Social Services, *Australian Community Sector Survey*, ACOSS Paper 173, (Vol 3, 2011), available at: <http://acoss.org.au/images/uploads/ACSS_Report_Volume_3_New_South_Wales.pdf>.

being employed by an employer in a covered industry, and performing work in that covered industry. This would allow for ease of administration as industries would be defined by, and comprise workers, included on the basis of ANZSIC classifications.

Recommendations

53. The Regulatory Policy team propose investigating expansion of the LSL Portable Schemes in line with the ANZSIC Classification framework. Analysis of workers' compensation data (to be provided by the Data and Analytics Team) and access to further ABS data would be necessary to determine industry profiles as well as rates of worker mobility, inclusion and exclusion of worker classes, across the proposed industries.

Ellen Lukins

Through Director: Rebecca Sullivan

Action Officer: Teo Findlay

Phone: 02 6205 2835

Sch 1 1.6

Sch 1 1.6

Job Mobility, Australia February 2020

| | Year ending Feb- 19(%) | Year ending Feb- 20(%) |
|---------------------------------------------------|---------------------------|---------------------------|
| Professionals | 21.1 | 21.7 |
| Technicians and trades workers | 15.0 | 13.5 |
| Clerical and administrative workers | 10.7 | 10.9 |
| Sales workers | 9.1 | 10.3 |
| Labourers | 9.5 | 7.7 |
| Community and personal service workers | 10.8 | 9.8 |
| Managers | 8.6 | 10.5 |
| Machinery operators and drivers | 5.5 | 6.5 |
| Not working at last February | 9.6 | 9.0 |

Source: Australian Bureau of Statistics, Participation, Job Search and Mobility,
Australia February 2020



8.2% of the Australian workforce* changed their employer or the business they operated in the year to February 2020, up from a record low of 7.7% in the year to February 2017.

The ABS estimates that 11.9 million Australian workers stayed in their current job and about 1.1 million Australian workers changed their employer or the business they operated in the year to February 2020. The ABS did not identify any impact to these statistics from the COVID-19 pandemic or the summer bushfires. The reference week in February fell in the first half of the month, at a time when there was a low number of confirmed COVID-19 cases within Australia and before any activity restrictions were implemented.

The absolute number of people changing businesses stayed about the same in the year to February 2020 compared to the previous year, but the size of the workforce grew and so the *proportion* of the workforce that changed jobs over the year fell to 8.2% in February 2020, from 8.5% in February 2019. This is up from the record low of 7.7% of the workforce that changed businesses in the previous 12 months in February 2017. It is much lower than in the 1970's and 1980's, when more than 15% of the workforce typically changed employer in each 12-month period (Chart 2). This long-term decline reflects demographic changes (older workers change jobs less frequently) and possibly structural changes. Compared to the past however, when workers do change employers now, more of them are changing occupations (43%) and moving into different industries (51%) than in the 1980's or 1990's. In the year to February 2020, a total of 1.98 million people ceased a job during the year. Two-thirds (1.3 million or 66%) left their job voluntarily and one-third (670,000 or 32%) left their job involuntarily, were temporary workers or left because of injury or health reasons.

Across industries, hospitality workers were the most likely to change jobs in the year to February 2020, with 14.3% changing their employer or business in the year, followed by workers in rental & real estate (11.4%) and administrative services (10.5%). Agricultural workers were the least likely to change employer or business in the past 12 months, followed by workers in public administration, and education & training (Chart 1). Across occupation categories, sales workers were the most likely to change jobs in the 12 months to February 2020, followed by machinery operators & drivers. Administrative workers were the least likely to change jobs in the 12 months to February 2019, followed by managers (Table 1).

* Total workforce regardless of employment status or work hours including all employees, casuals, contractors, owners and operators. 'Duration of continuous employment in current business' is a proxy indicator of labour turnover.

Chart 1: Proportion of workforce that changed employer

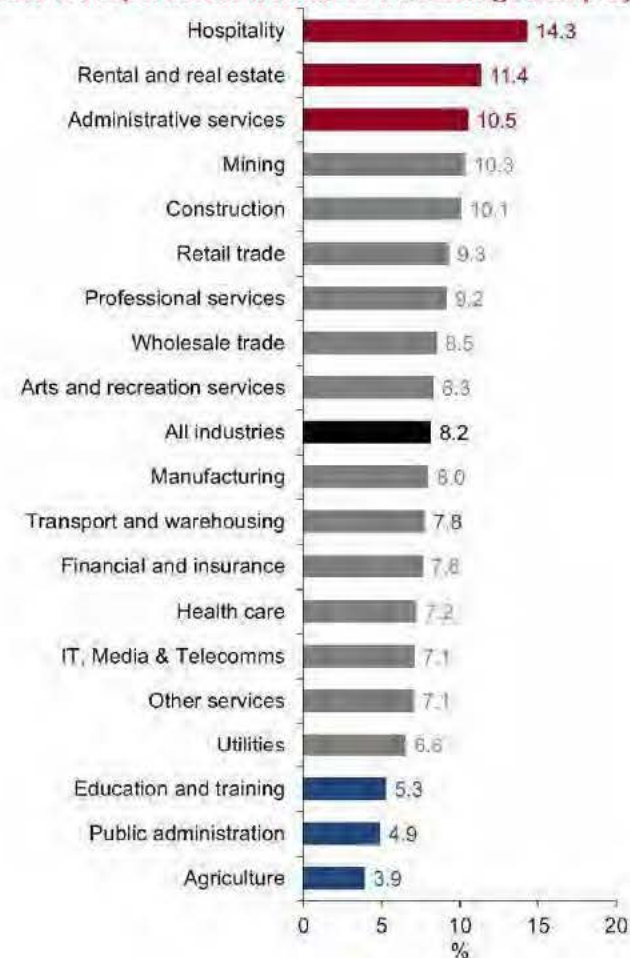
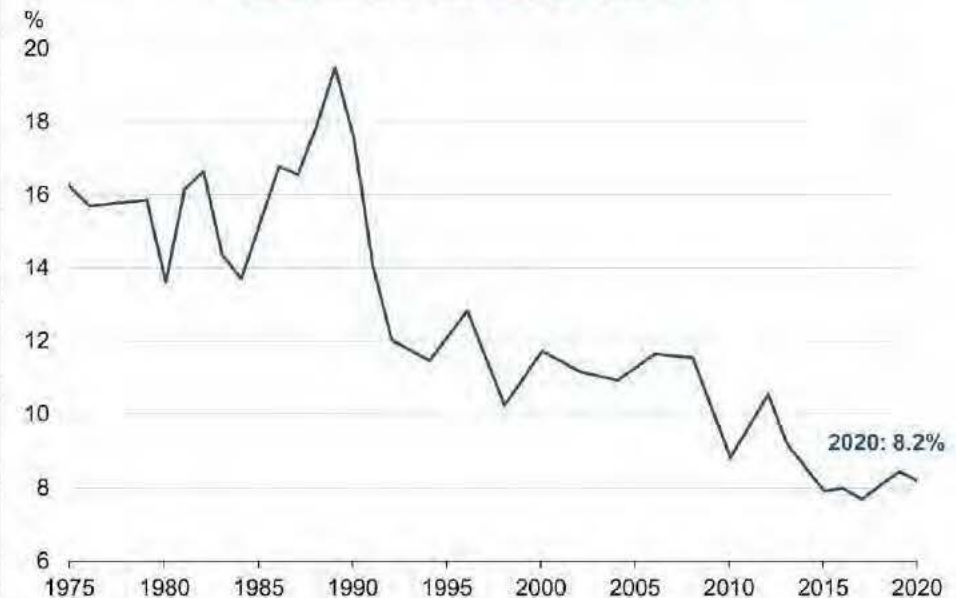


Table 1: Workforce and turnover, year to February 2020, by industry and occupation

| | Total workforce (Feb 2020) | Changed business in the past year | Proportion of workforce that changed business in the past year |
|--------------------------------------|----------------------------|-----------------------------------|----------------------------------------------------------------|
| Industry | '000s | '000s | % |
| Agriculture | 317.1 | 12.4 | 3.9 |
| Mining | 210.3 | 21.7 | 10.3 |
| Manufacturing | 842.3 | 67.3 | 8.0 |
| Utilities | 123.0 | 8.1 | 6.6 |
| Construction | 1,083.4 | 109.2 | 10.1 |
| Wholesale trade | 339.6 | 29.0 | 8.5 |
| Retail trade | 1,115.2 | 103.7 | 9.3 |
| Hospitality | 752.5 | 107.8 | 14.3 |
| Transport and warehousing | 584.8 | 45.4 | 7.8 |
| IT, Media & Telecomms | 191.4 | 13.6 | 7.1 |
| Financial and insurance | 440.3 | 33.6 | 7.6 |
| Rental and real estate services | 208.3 | 23.7 | 11.4 |
| Professional services | 1,060.6 | 97.1 | 9.2 |
| Administrative services | 366.9 | 38.6 | 10.5 |
| Public administration | 765.6 | 37.6 | 4.9 |
| Education and training | 995.4 | 52.5 | 5.3 |
| Health care | 1,577.5 | 114.2 | 7.2 |
| Arts and recreation services | 217.7 | 18.1 | 8.3 |
| Other services | 434.0 | 30.7 | 7.1 |
| All Industries | 12,981.5 | 1060.4 | 8.2 |
| Occupational group | | | |
| Managers | 1,513.8 | 110.8 | 7.3 |
| Professionals | 2,873.8 | 230.1 | 8.0 |
| Technicians & trades workers | 1,647.5 | 143.7 | 8.7 |
| Community & personal service workers | 1,209.9 | 104.2 | 8.6 |
| Clerical & administrative workers | 1,608.1 | 115.2 | 7.2 |
| Sales workers | 980.0 | 109.4 | 11.2 |
| Machinery operators & drivers | 731.0 | 68.9 | 9.4 |
| Labourers | 1,057.1 | 81.6 | 7.7 |

 Sources: ABS, *Participation, Job Search and Mobility*, February 2020 ([here](#));

Chart 2: Proportion of workforce that changed employer or business in the previous 12 months, 1975 to 2020

Data information

The statistics in this fact sheet were sourced from the *Participation, Job Search and Mobility, Australia* survey conducted in February 2020 as a supplement to the Australian Bureau of Statistics (ABS) monthly Labour Force Survey (LFS). This survey informs on the following broad labour market issues: labour force participation potential; underemployment and marginal attachment; as well as job search experience and labour mobility.

These data illustrate the dynamic nature of the labour market and provides further insights into labour mobility – that is, the ability of workers to move between jobs – in Australia. The monthly labour force numbers are often interpreted in a static way, for example, in February 2020 the seasonally adjusted increase in employment of 19,300 people comprised of well over 300,000 people entering employment, and more than 300,000 leaving employment in the month.

Ai Group Economics and Research Team

 Website: <https://www.aigroup.com.au/resourcecentre/economics/>

 Email: economics@aigroup.com.au

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 18/05/2021 6:29 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: PLSL Brief - Draft
Attachments: PLSL - BRF to EGM WSIR.docx, Attachment A_Labour Turnover in 2020 Fact Sheet.pdf

UNOFFICIAL

Hi Rebecca

Please see attached for your review and comment. I look forward to discussing with you tomorrow (or once you've had a chance to review).

Kind regards

Teo

Teo Findlay | Assistant Director

Phone: 02 6205 2835 | Email: teo.findlay@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

GPO Box 158, Canberra, ACT 2601 | www.act.gov.au

Background

3. The Parliamentary and Governing Agreement for the 10th Legislative Assembly provides that the Government will “*amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession.*”
4. In July 2020 the ACT Legislative Assembly passed a motion calling on the ACT Government to:
 - a. work with Hair Stylists Australia, the ACT hairdressing industry, employers and employees, employee bodies and registered training organisations to determine how to include the hairdressing industry in the *Long Service Leave (Portable Schemes) Act 2009* (LSL Portable Schemes Act); and
 - b. investigate extending the LSL Portable Schemes Act to other non-public sector industries.

Purpose of consultation

1. The ACT Government is committed to ensuring that as far as practicable, all workers can access long service leave entitlements. This includes workers in non-traditional industries, where the nature of the industry means that employer flexibility and mobility and is required to meet the needs of a sector.
2. The purpose of the consultation is to conduct an open public consultation process to investigate how the LSL Portable Schemes Act could be expanded to non-public sector industries, with particular regard to industries with high rates or worker mobility, and to seek key stakeholder views about concerns and potential challenges associated with expansion of the LSL Portable Schemes.
3. Expansion of the LSL Portable Schemes to non-public sector industries is a completely new initiative, and one that has not been introduced in any other jurisdiction. Currently, non-public sector industries in the ACT are entitled to long service leave under the *Long Service Leave Act 1976* (the 1976 Act) and are unable to transfer accumulated leave if they change employers within the industry.
4. The ACT Government is addressing entitlement inequities faced by workers who work in jobs that are transient in nature. By taking steps to improve retention of skilled workers across industry to minimise the impact of skill shortages it will lead to improved worker and job security to assist sectors to attract and retain staff.

Issues

5. The Minister for Industrial Relations and Workplace Safety agreed to conduct two stages of external consultation to investigate the expansion of the LSL Portable Schemes Act.

Commented [FT1]: 1. Paragraph: Concerns of not consulting in a way that is non-genuine - articulate that the intended genuine consultation is purposeful – consultation to verify our thinking and support our position of consulting on broad approach to investigating potential industries for expansion.

6. A timeline was developed outlining the milestones for consultation and subsequent amendments ([CMTEDD2021/559](#)). However, the Stage 1 targeted consultation with hairdressing industry stakeholders has not been released to stakeholders in accordance with the proposed timeline.
7. As a result, we recommend the timeline for consultation and subsequent amendments be adjusted accordingly. The following table outlines the proposed revised timeline (dependent on the release of the stage 1 consultation paper).

| Milestones | Completion Date |
|---------------------------------------------------------------------------------------------|-----------------|
| 1. Consultation with the Long Service Leave Authority | Ongoing |
| 2. Stage 1: targeted consultation with hairdressing industry stakeholders (approx. 6 weeks) | June 2021 |

Sch 1 1.6

8. The Australian Bureau of Statistics (ABS) 2020 report into job mobility indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020.¹
9. Mobility remained highest for professionals, at 21.7% for the year ending February 2020, and 21.1% for the year ending 2019. There was a considerable increase in mobility reported by managers, increasing by 19.7% (18,200 people) to the year ending February 2020.²

¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

² <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

10. It is unclear whether the ABS collects or publishes data broken down any further than that published in the table below.

| | Year ending Feb-19(%) | Year ending Feb-20(%) |
|----------------------------------------|--------------------------|--------------------------|
| Professionals | 21.1 | 21.7 |
| Technicians and trades workers | 15.0 | 13.5 |
| Clerical and administrative workers | 10.7 | 10.9 |
| Sales workers | 9.1 | 10.3 |
| Labourers | 9.5 | 7.7 |
| Community and personal service workers | 10.8 | 9.8 |
| Managers | 8.6 | 10.5 |
| Machinery operators and drivers | 5.5 | 6.5 |
| Not working at last February | 9.6 | 9.0 |

Source: Australian Bureau of Statistics, Participation, Job Search and Mobility, Australia February 2020

11. There is no further national data available relating to labour mobility rates for Australia. However, the Australian Industry Group (Ai Group) has published data (cited as sourced from the ABS) providing workers 'duration of continuous employment in current business'.³
12. According to the Ai Group publication Labour Turnover in 2020 (Attachment A), in the year to February 2020, a total of 1.1 million people ceased a job during the year, with the single most common reason being 'wanting to obtain better job conditions or wanting a change'.
13. Across industries, hospitality workers were the most likely to change jobs in the year to February 2020, with 14.3% changing their employer or business; followed

³<https://www.aigrouptalent.com.au/wp-content/uploads/Ai-Group-factsheet-Labour-Turnover-in-2019.pdf>

Commented [FT3]: Available data provides limited insight into levels of mobility across industries to be investigated. Consultation will allow stakeholders to provide insight into the nature and mobility in the industries we propose to investigate.

by workers in rental and real estate 11.4%; administrative services 10.5%; Retail Trade 9.3%; and Professional Services 9.2%.

14. On this basis, it is proposed a second stage discussion paper be developed investigating expansion of the LSL Portable schemes Act to the industries at paragraph 13 of this briefing.

Scheme design

15. A worker who (a) is employed by an employer within a covered industry; *and* (b) performs work in that covered industry, is entitled to long service leave in line with the schedule for that industry. This two-tiered approach permits the Act to cover specific functional roles within an industry. For example, the security industry scheme applies only to workers who carry out designated 'security activities' (defined under the *Security Industry Act 2003*), rather than all workers in the industry.
16. This has been done in three out of the four covered industries. However, the definition of community sector work is intentionally broad so that *all* roles within the community sector industry are covered. The policy intent behind this particular scheme is to promote greater retention in the community sector as a whole, given the high staff turnover in that industry as well as the high social return on investment from community sector work.⁴
17. In considering expanding the LSL Portable Schemes Act, we recommend a classification framework for organising data about businesses by grouping business units carrying out similar activities be used.
18. The ABS uses Australian and New Zealand Standard Industrial Classification (ANZSIC) in most of its economic collections and for compilation of the national accounts. A wide range of other users from government, academia and the private sector use the ANZSIC for financial, administrative and statistical purposes.

Coverage of Industries

19. Whether an industry is defined by ANZSIC Classification, ANZSCO Classification there may be classes of workers that have high rates of mobility, while others under the same ANZSIC or ANZSCO Division may have low rates of mobility. Published data identifying rates of mobility is very limited and not available to the level required to provide evidence of mobility across industries.
20. Dependencies exist for the inclusion of certain occupations under some industries (while workers in part of the industry may be mobile other occupations in the same ANZSIC or ANZSCO classification may not be as mobile or mobile at all). This exposes the Territory to risk with respect to justification for inclusion or exclusion of workers classes from a ANZSIC classifications.

Commented [FT4]: Consider - Para to follow what is ANZSIC? and What is ANZSCO?

ANZSIC Classifications do not change, whereas ANZSCO Classifications do.

Commented [FT5]: or primary activities undertaken in an industry, or across a group of occupations.

Commented [FT6]: Formal ACT Government request to ABS for broken down data around mobility published at [https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#:text=Job%20mobility;8.2%25%20\(1.1%20million&text=Mobility%20remained%20highest%20for%20professionals,the%20year%20ending%20February%202020](https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#:text=Job%20mobility;8.2%25%20(1.1%20million&text=Mobility%20remained%20highest%20for%20professionals,the%20year%20ending%20February%202020)

⁴ ACT Council of Social Services, *Australian Community Sector Survey*, ACOSS Paper 173, (Vol 3, 2011), available at: <http://acoss.org.au/images/uploads/ACSS_Report_Volume_3_New_South_Wales.pdf>.

21. In examining industry and occupation classifications it is also clear that, while some worker classes forming an industry may comprise a large mobile cohort of workers, other classes of workers that form part of the same industry may be in very small numbers and potentially work for the same employer over many years, or even an entire career.
22. This raises the issue of the intent of the LSL portable Schemes, to provide access to entitlements for a worker who is employed in a covered industry, performing work in that covered industry for an extended period, but moving across employers in that industry.
23. Capturing parts of industry classes where workers are mobile can provide access to equitable entitlements for those workers. However, including worker classes from the same industry class, where there are low levels of worker mobility, may impose cost and administrative burden on businesses that is not justified given the profiles of their work force.
24. For example, the ABS Participation, Job Search and Mobility, Australia data provides that the highest rate of mobility across industries was for professionals at 20.1% for the year to February 2020.⁵ As an example of the complexity in defining an industry, ANZSIC includes professionals under Division M (Professional, Scientific and Technical Services).
25. In considering investigating expansion of the LSL Portable Schemes to Professionals, an approach to defining the industry, such as using ANZSIC classifications would be necessary. However, expanding the schemes to include Division M would potentially include worker classes that do not have high rates of mobility.
26. For example, Division M, which includes Legal Services and Accounting Services may have high rates of mobility. However, Division M also includes Scientific Testing and Analysis Services and Engineering Design and Engineering Consulting Services. An assumption could be made that this worker class does not have high rates of worker mobility. However, evidence to support Scientific Testing and Analysis Services and Engineering Design and Engineering Consulting Services not having high rates of mobility is not available. Therefore, expansion to part of an industry and exclusion of other parts of that same industry on the basis of an assumption, would be difficult to justify.
27. A major consideration in finalising a framework for classifying industries or occupations to expand the LSL Portable Schemes to, is the data available to support a case for expansion of the LSL Portable Schemes.
28. Accordingly, for ease of administration, it would be necessary to settle on a classification framework/model that does not capture cohorts of workers that do

Commented [FT7]: a scheme that allows those workers to take leave entitlements with them as they move to across employers in covered industries.

Commented [FT8]: For broad consultation with key stakeholders – to establish through consultation – what mobility looks like in that industry.

Commented [FT9]: This creates risk as there must be evidence for the inclusion or exclusion of industries, occupations, or classes of workers that form part of an industry.

⁵ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

not have high rates of mobility across an industry or exclude classes of workers that have high rates of mobility across an industry.

29. Given the data relating to mobility of workers across industries is limited, we recommend the scope of stage two consultation be broad i.e. consultation would be at the ANZSIC classification level, to seek feedback from key stakeholders to provide evidence and demonstrate the rates of mobility of workers undertaking work across whole of the industries proposed for investigation at paragraph 13 of this brief.

Consultation

30. Nil.

Work Health and Safety

31. Nil.

Financial

32. Nil.

Risks/ Sensitivities

33. Nil.

Media

34. Nil.

Ellen Lukins

Action Officer: Rebecca Sullivan

Phone: 02 6205 8353

From: "Lukins, Ellen"
Sent: 11/03/2021 12:16 PM
To: "Young, Michael" <Michael.Young@act.gov.au>
Subject: PLSL consultation paper
Attachments: Briefing to Minister_Long Service Leave Portable Schemes Act 2009_Expansion to Hairdresser_Consultation Paper.DOCX, Attachment A_Long Service Leave (Portable Schemes) ACT 2009 - Expansion to Hairdressers - Consultation Paper.DOCX

OFFICIAL

Hi

I've tweaked the cover brief, switching to Minister Gentleman but noting WSIR has commenced consultation on the consultation paper with stakeholders. I've also tweaked the consultation paper slightly but have left the proposed definition in noting the third consultation question asks if it should be expanded to broader (ie ANZSIC 9511).

Both attached for your review.

Happy to chat

Cheers,
EL

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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Chief Minister, Treasury and Economic Development Directorate

To: Minister for Industrial Relations and Workplace Safety Tracking No.:
CMTEDD2021/559

From: Executive Group Manager, Workplace Safety and Industrial Relations

Subject: Long Service Leave (Portable Schemes) Act 2009: Expansion to Hairdressers

Critical Date: 19/03/2021

Critical Reason: To agree the approach to considering expansion of the portable long service leave schemes legislation

- UT .../.../...
- DUT .../.../...

Recommendations

That you:

1. **agree** the proposed approach for considering potential expansion of the portable long service leave schemes and addressing possible scheme design issues that might arise as a consequence;

Agreed / Not Agreed / Please Discuss

2. **note** that consultation with the Long Service Leave Authority and Governing Board and targeted consultation with the hairdressing industry and employee representatives, including release of the consultation paper at Attachment A has been initiated by WSIR;

Noted / Please Discuss

3. **note** that for the purposes of this consultation a definition for the hairdressing industry has been proposed; and

Noted / Please Discuss

4. **note** that a second phase of consultation will be undertaken focusing on scheme design to facilitate future expansions of the Portable Long Service Leave schemes.

Noted / Please Discuss

Rachel Stephen-Smith MLA /...../.....

Minister's Office Feedback

Background

1. The LSL Portable Schemes Act (the LSLA) currently supports long service leave for designated workers within four covered industries in the ACT: Building and Construction; Contract Cleaning; Community Sector; and Security.
2. Portable long service leave entitlements allow workers (employees and contractors) to accumulate long service leave entitlements based on their length of service in a particular industry, rather than their length of service with a single employer.

Issues

3. The Parliamentary and Governing Agreement for the 10th Legislative Assembly provides that the Government will *“amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession.*
4. In July 2020 the ACT Legislative Assembly passed a motion calling on the ACT Government to:
 - a.) work with Hair Stylists Australia, the ACT hairdressing industry, employers and employees, employee bodies and registered training organisations to determine how to include the hairdressing industry in the Long Service Leave (Portable Schemes) Act 2009; and
 - b.) investigate extending the LSL Portable Schemes Act to other non-public sector industries.

Proposed approach

5. WSIR propose to conduct two stages of external consultation.
6. The initial round of consultation has already commenced with the Long Service Leave Authority and its Governing Board and focuses on the issue of hairdresser coverage.
7. As part of the initial round of consultation, a six week targeted consultation with the hairdressing industry and employee representatives will:
 - a.) outline a proposed scope and definition for hairdressers, to facilitate discussion, and be directed to key industry stakeholders; and
 - b.) be initiated by WSIR direct to stakeholders listed at Attachment C via release of the consultation paper at Attachment A.

Sch 1 1.6

9. A second round of public consultation is proposed that would focus on scheme design issues/administration that would arise from expanding the scheme to hairdressers and potential broader scheme expansion.

Sch 1 1.6

Proposed scope defining hairdressing

11. How the hairdressing industry is defined will be critical to the development of a workable portable scheme. In effect, the definition determines the scope of the scheme and dictates which hairdressing industry workers are included and will have access to the associated portable long service leave entitlements.
12. In developing a definition for the hairdressing industry, industry coverage structures provided by the Australian and New Zealand Standard Classification of Occupations (ANZSCO) and the Australian and New Zealand Standard Industrial Classification (ANZSIC) Code system have been considered.
13. For the purposes of this consultation a strict interpretation of the Legislative Assembly's July 2020 motion has been applied. WSIR considered the primary duties routinely associated with the hairdressing industry, and information available from apprentice schemes, and propose to define hairdressers and barbers whose primary duties include:
 - a.) cutting and styling hair;
 - b.) hair colouring services and treatments;
 - c.) chemically straightens and/or permanently curling hair;
 - d.) hair and scalp care treatments; and
 - e.) related grooming services.
14. It is however anticipated that stakeholder feedback would likely suggest that economies of scale are better met by a broader definition of the industry using the ANZSIC coding for "hairdressing and beauty services".

Proposed timeline for consultation and Cabinet consideration

| Milestones | Completion Date |
|---------------------------------------------------------------------------------------------|------------------|
| 1. Consultation with the Long Service Leave Authority | Ongoing |
| 2. Stage 1: initial targeted consultation with hairdressing industry stakeholders (6 weeks) | March/April 2021 |

Sch 1 1.6

Sch 1 1.6

Sch 1 1.6

10. A Communications Plan has been drafted for your consideration at (Attachment B).

Financial Implications

11. There are no financial implications resulting from this brief.

Consultation

Internal

12. Nil

Cross Directorate

13. Consultation has been initiated with the Long Service Leave Authority and Governing Board in relation to the possible expansion of the portable leave schemes.

External

14. Nil.

Work Health and Safety

15. Nil.

Benefits/Sensitivities

16. The proposed consultation paper is an opportunity to receive stakeholder submissions providing views and evidence to inform expansion of the LSL Portable Schemes to the hairdressing industry and other non-public sector industries.

Communications, media and engagement implications

17. Noting the motion passed in the Legislative Assembly received media attention, it is anticipated the proposed consultation may attract media attention. A Communication Plan has been developed with Communications and Engagement to appropriately manage and direct any resulting media coverage.

Signatory Name: Michael Young

Phone: 53095

Action Officer: Ellen Lukins

Phone: 53874

Attachments

| Attachment | Title |
|-------------------|------------------------------------------------------------------------------------------------------------|
| Attachment A | <i>Long Service Leave (Portable Schemes) Schemes Act 2009 Expansion: Hairdressers – Consultation Paper</i> |
| Attachment B | Communications Plan |
| Attachment C | Proposed list of stakeholders |

Contents

- PART 1 - Introduction4**
 - Purpose..... 4
- How can i be involved?5**
 - Making a submission 5
 - Key Consultation Questions 5
- Part 2 - Background.....6**
 - Long Service Leave (Portable Schemes) Act 2009 (ACT).....7
 - How the schemes are administered 7
- Part 3 - Defining the Hairdressing industry.....8**
 - Inclusions - primary ‘relevant’ activities.....8
 - Exclusions – other activities9
 - Scenario 9
 - Key Consultation Questions9
- Part 4 - What a new Scheme might look like.....10**
 - Benefits.....10
 - How would it work?11
 - What costs and obligations might be involved in a ‘Hairdressing’ Portable Long Service Leave Scheme?11
 - Functions of the LSL Authority 11
 - Registration Requirements 12



| | |
|------------------------------------------|-----------|
| Key Consultation Questions | 12 |
| Part 5 – Further Information..... | 12 |
| Projected timeframes..... | 12 |
| Conclusion | 12 |

PART 1 - INTRODUCTION

The ACT Government has committed to ensuring fair working conditions for all Canberrans, including supporting workers' access to long service leave entitlements in industries with high rates of employee mobility.

Long service leave is well established in Australia with a high degree of consensus regarding its benefits. Long service leave enables employees to recover their energies and return to work renewed, refreshed, and reinvigorated, after long periods of service. There are many well recognised positive impacts to supporting long service leave for employers and employees, including improved employee health and wellbeing, which in turn contributes to improved productivity.

Long service leave is an important tool to recognise and reward employees for commitment to service, and is an entitlement we believe all workers should have the opportunity to access. However, modern contract and project-based employment arrangements have meant that workers in some industries have been unable to accumulate or access long service leave entitlements.

In recognition of this challenge, the Government agreed in 2020 to:

- (a) work with Hair Stylists Australia, the ACT Hairdressing Industry, employers, employees, employee bodies and registered training organisations to determine how to include hairdressing in the *Long Service Leave (Portable Schemes) Act 2009*; and
- (b) investigate extending the *Long Service Leave (Portable Schemes) Act 2009* to other non-public sector Industries.

Chief Minister, Treasury and Economic Development Directorate (CMTEDD) is commencing consultation to seek the views of the ACT hairdressing sector, especially from employers and employees, and their representatives and industry bodies, about expanding long service leave portability to the hairdressing industry to provide to the ACT Government for its consideration of coverage under the portable long service leave schemes.

Purpose

The purpose of the consultation is to:

- consult on the expansion of the portable long service leave scheme to hairdressers and the proposed definition of the hairdressing industry should the scheme be expanded, with particular regard to activities included or excluded from the industry;
- seek views about concerns and potential challenges associated with the portable long service leave scheme being expanded to the hairdressing industry; and
- provide interested stakeholders with information about anticipated timeframes for consideration.

HOW CAN I BE INVOLVED?

Making a submission

This consultation paper seeks views on expanding the *Long Service Leave (Portable Schemes) Act 2009* to the hairdressing industry. You can have your say about the proposal by providing a written submission, focused on the key consultation questions.

All submissions received may be published unless provided in confidence. Material provided in confidence should be clearly marked 'IN CONFIDENCE'. For submissions received from individuals, all personal details (for example, home and email addresses, signatures, phone, mobile and fax numbers) will be removed for privacy reasons before being published.

Your submission can be emailed to wsir@act.gov.au or sent to:

Regulatory Policy
Workplace Safety and Industrial Relations Group
GPO Box 158
Canberra City ACT 2601

The Closing Date for submissions is 23 April 2021

Key Consultation Questions

Part 3 of this Consultation Paper outlines a proposed scope and definition of hairdressers for the purposes of a new Long Service Leave Portable Scheme (LSL Portable Scheme). Part 3 poses three specific consultation questions:

1. The Portable Long Service Leave Schemes allow long service leave entitlements to be accrued by workers in mobile industries; considering the nature and mobility of work in the hairdressing industry, should portable long service leave entitlements be expanded to hairdressers and barbers?
2. In considering the hairdressing industry, have we captured the key activities of the industry in an appropriate way – are our assumptions for the industry correct?
3. Do our assumptions about mobility within the hairdressing industry make sense to you? Or should a broader definition be considered that includes other personal care service activities (such as make-up services, or hair removal services) as core activities for the purposes of the industry definition?

Part 4 of this Consultation Paper outlines a proposal for establishing the administrative arrangements for a new LSL Portable Scheme. Part 4 poses four specific consultation questions:

1. Broadly speaking, is there support for mirroring the administrative requirements that have been established by the LSL Portable Schemes Act for a new scheme?
2. Are there specific considerations that we should have regard to in the hairdressing industry in establishing arrangements for registration, and management of the scheme by the ACT Long Service Leave Authority (LSL Authority)?
3. Based on our analysis of the existing Portable Schemes, have we fairly represented potential cost implications to the hairdressing industry?
4. In considering current entitlements for the existing Portable Schemes, which range between 4 weeks and 13 weeks, what accrual leave arrangements are most appropriate for the hairdressing industry, and for what period of service? For example, the Community Sector defined industry allows for 4.33 weeks of long service leave after 5 years of recorded service.

PART 2 - BACKGROUND

In 2009, the ACT Government recognised that many Canberrans were disadvantaged by traditional views about eligibility to long service leave. The changing nature of employment has allowed many Australian workers to take advantage of employment and career flexibility; often resulting in changes to employers and employment activities to meet consumer and business needs. Unfortunately, increased flexibility in employment traditions has meant that long service leave in its current form has become inaccessible to many workers.

Long Service Leave Act 1976

The *Long Service Act 1976* (the LSL Act) covers employees in the ACT who are not covered by an award or agreement or where an award or agreement does not contain provisions for long service leave. Full-time and part-time employees are included in this coverage. Casual employees may also be covered.

Under the LSL Act an employee is entitled to long service leave after completing 7 years' service with a single employer, for the period of the service. Under the LSL Act, an employee accrues long service leave at the rate of 1/5 of a month's leave for each year of service.

$$\begin{array}{rcl} \frac{1}{5} \times \text{The amount of continuous service in years} \times 52 & = & \text{Amount of leave} \\ 12 & & \text{in weeks} \end{array}$$

For full-time employees, payment for long service leave is made at the rate of an amount equivalent to the ordinary remuneration the employee would have received in respect of the period of leave if they had not taken the leave.

$$\text{Ordinary remuneration} \times \text{weeks entitlement} = \text{Amount of long service leave}$$

Example: \$560.00 (ordinary remuneration) x 6.0667 (weeks entitlement for seven years) = \$3397.35

An employer is required to ensure that a contingent liability is retained over the duration of the employment, to allow for adequate funds to pay the employees' long service leave entitlements should they remain with the employer for 7 years. There is, however, no regular levy paid under the LSL Act and it is up to the employer to administer. This can disadvantage workers who work for multiple employers over the course of their employment; as shifting from employer to employer will remove an employer's responsibility to retain the required long service leave funds. Under the traditional LSL Act, the long service leave liability is attached to an employee by the responsible employer.

In contrast, the LSL Portable Schemes allow workers who choose to remain in defined industries to accrue long service leave entitlements through continuous industry service, rather than with one employer. Workers who are not hired on an ongoing basis or change jobs out of defined industries may be unable to qualify for long service leave.

The Australian Bureau of Statistics 2020 report into job mobility indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020.¹ High job mobility rates among community and personal service workers indicates 9.8 per cent of workers changed employers in the year ending February 2020. Given that 7 years is the usual qualifying period for workers to access long service leave in the Territory, this trend indicates many workers will not stay in continuous employment with the same employer long enough to access long service leave entitlements. If rates of job mobility continue to increase, even fewer workers will be eligible to access long service leave entitlements.

¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

Long Service Leave (Portable Schemes) Act 2009 (ACT)

Challenges with the traditional approach to long service leave have meant that many workers are not given the recognition of service despite undertaking the same work for many years within an industry. This means that in many cases workers will not achieve the required amount of service with a single employer to be eligible to access long service leave entitlements. Further, there are risks that employers within industries that have high rates of job mobility assume that some workers may not stay in their job for the time required to reach eligibility for long service leave benefits, and do not make provision for long service leave entitlements under the traditional LSL Act or award.

To address these challenges, the LSL Portable Schemes support long service leave entitlements to be accumulated on an employee's length of service in a particular industry, rather than their length of service with a single employer. The portable schemes allow for employees to transfer from employer to employer (or 'port' their entitlements) without losing the service already accrued within the covered industry.

The LSL Portable Schemes Act supports designated workers within four defined industries: Building and Construction; Contract Cleaning; Community Sector; and Security.

How the schemes are administered

The LSL Authority administers the portable long service leave benefit schemes for workers in the ACT.

The LSL Authority seeks to ensure that:

- all employers and their employees in covered industries are registered with the Authority;
- long service leave payments to employees and contractors, and reimbursements to employers, are made in accordance with the Act;
- employers' contribution levies are collected efficiently and effectively; and
- long service leave funds are invested prudently, with the objective being to ensure a modest long-term surplus of assets over liabilities in mature schemes.

Registered employers within each industry pay a quarterly levy to the Authority to fund the long service leave entitlements of their workers. The Authority maintains separate registers and funds for each of the defined schemes.

In accordance with the LSL Portable Schemes Act, levies are invested by the Authority and held in pooled investment funds. If a worker permanently exits a covered industry, levies paid by employers for that worker are held in the fund. Should circumstances arise where there is a deficit or surplus of monies held in a fund, actuarial investigation (conducted at least once every three years) would consider any reduction or increase in levies payable by employers.

Building and Construction Industry

Building and construction industry workers registered on or after 1 January 1997 are entitled to 13 weeks of long service leave after 10 years of recorded service in the industry, and continue to accumulate 1.3 weeks of leave for every year thereafter. The applicable levy for the building and construction industry is currently 2.10 per cent.

Contract Cleaning Industry

Contract cleaning industry workers registered on or after 24 June 2000 are entitled to 6.06 weeks of long service leave after 7 years of recorded service in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the contract cleaning industry is currently 1.20 per cent.

Community Sector Industry

Community sector industry workers registered on or after 1 July 2010 are entitled to 4.33 weeks of long service leave after 5 years of recorded service in the industry, and continue to accumulate 0.867 weeks of

leave for every year thereafter. The applicable levy for the community sector industry scheme is currently 1.20 per cent.

Security Industry

Security industry workers registered on or after 1 January 2013 are entitled to 6.06 weeks of long service leave after 7 years of recorded service in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the security industry scheme is currently 1.07 per cent.²

Additional information about the LSL Authority and each of the current defined industries can be found at www.actleave.act.gov.au.

PART 3 - DEFINING THE HAIRDRESSING INDUSTRY

How we describe the hairdressing industry will be critical to the development of a workable portable scheme. In effect, the definition provides the scope of the scheme, and dictates which hairdressing industry workers are included and will be entitled to access portable long service leave.

For the purposes of this consultation, we propose to define the hairdressing industry by the functions and activities undertaken by workers. However, we also understand that this approach would need to be balanced with a definition for the industry that provides sufficient clarity in relation to coverage, both for industry and the administration of the scheme, and sufficient scale in terms of number of employers and workers covered by the scheme.

In seeking your views, we propose an approach that identifies a workers' primary activity as the key criterion for inclusion, rather than complementary, or supplementary activities that might be undertaken by a worker within the hairdressing industry. Alternatively, it may be that sufficient scale is only achieved where the industry is defined by reference to Australian and New Zealand Standard Industrial Classification (ANZSIC) system code 9511.

The ANZSIC system classifies entities based on main business activities, primarily to support statistical and data analysis. The ANZSIC system has four levels of classification, with increasing detail at each level. The first-level industry classification that is applicable covers operators in a broad range of personal care services, many of which are unrelated to the focus of this consultation paper. Primarily, we focused our attention on workers that predominantly undertook hairdressing services while recognising that these workers may also be skilled at delivering other beauty services that would fall within the applicable ANZSIC code 9511. Further information about the ANZSIC can be found at abs.gov.au.³

When describing the hairdressing industry, we recognise that some workers may offer a range of beauty services in addition to their primary activity of hairdressing; however, we understand that predominantly, hairdressers regard hairdressing as their 'core' employment activity.

Inclusions - primary 'relevant' activities

For the purpose of this consultation paper, should the portability of long service leave entitlements be expanded to hairdressers and barbers, we propose it be defined as hairdressers and barbers whose primary duties include:

- cutting and styling hair;
- hair colouring services and treatments;
- chemically straightening and/or permanently curling hair;
- hair and scalp care and treatments, and related grooming services.

² The ACT Long Service Leave Authority Governing Board appoint an actuary to investigate the state and adequacy of the money of the Authority at least once every three years. This includes whether any reduction or increase is necessary in the rates of levies paid to the Authority by employers or voluntary members.

³ <https://www.abs.gov.au/ausstats/abs@.nsf/0/20C5B5A4F46DF95BCA25711F00146D75?opendocument>

Exclusions – other activities

This would exclude workers whose primary duties were more closely aligned to:

- make-up services and styling;
- waxing and hair removal services (such as electrolysis);
- nail care and styling;
- skin care and facial massage services; and
- tanning services.

However, for hairdressers who were also able to provide additional services, such as make-up services, workers may relocate on the basis of their primary duty whilst retaining their ability to offer complementary services.

Scenario

Mark works for a busy city salon; to complement his hairdressing training, Mark is also able to offer professional make-up services. Mark decides to relocate to a smaller salon, but maintains hairdressing as his primary activity.

Mark would be entitled to port his long service leave entitlements.

Ava works for a small suburban hairdressing salon. In addition to her hairdressing services, Ava also provides hair removal services to clients. Ava decides to leave the suburban salon and joins another employer primarily for waxing and hair removal.

As Ava has left the industry where her primary activities are hairdressing, she would not be entitled to port her long service leave entitlements.

Key Consultation Questions

1. The Portable Long Service Leave Schemes allow long service leave entitlements to be accrued by workers in industries where workers are prone to moving between employers. Considering the nature and mobility of work in the hairdressing industry, should portable long service leave entitlements be expanded to hairdressers and barbers?
2. In considering the hairdressing industry, have we captured the key activities of the industry in an appropriate way – are our assumptions for the industry correct?
3. Do our assumptions about mobility within the hairdressing industry resonate – or should a broader definition be considered that includes other personal care service activities (such as make-up services, or hair removal services) as core activities for the purposes of the industry definition?

PART 4 - WHAT A NEW SCHEME MIGHT LOOK LIKE

Benefits

For an employee to access traditional long service leave entitlements, they need to have been in continuous employment with the same employer for at least 7 years. This does not mean that they need to have been working in the same position with the one employer. The employee's position, responsibilities or pay may change during that period. However, once they have achieved the required amount of service for that employer, they are eligible to access long service leave.

Prior to the introduction of the Territory's portable long service leave schemes, many workers in defined industries were ineligible for leave entitlements under the LSL Act as they did not remain with the same employer for a long enough period. The introduction of the portable schemes has enabled more workers to receive long service leave for their service to their industry.

Portability of long service leave is important for workers in industries that are, by their nature, functionally mobile. This means that workers may not work for a single employer for long periods of time, but will remain employed over many years in a particular industry.

Although portable long service leave does impose a cost to business, the certainty around the cost allows employers in covered industries to meet their long service leave obligations through the payment of levies.

In considering how best to design a new portable scheme the ACT Government is aware there may be advantages and disadvantages of a scheme for employers and employees. Research suggests there are a number of well-established common themes. Some of these are outlined in the table below.⁴

Advantages of PLSL schemes

Retention of workers – PLSL schemes address challenges in retaining employees in industries with high levels of labour mobility.

Equity – Workers in highly casualised or contract roles otherwise have no practical access.

Mobility and flexibility – Workers have more capacity to move between employers or to take short periods out of employment to meet commitments such as carer responsibilities.

Productivity and work environment – The capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work has advantages for boosting productivity and morale.

Employee attraction – A benefit for “good employers” as employees feel less compelled to stay in poorly managed workplaces in order to meet LSL eligibility requirements.

Non-compliance problems reduced – Employers pay for entitlements as they accrue.

Free-riding problems reduced – Industry based LSL schemes mean that all employers are obliged to fund LSL entitlements, regardless of whether they retain employees who reach the qualifying period for taking leave.

Administrative benefits for employers – Industry funds effectively remove from employers the responsibility for administering LSL arrangements and payment for employees.

Cost certainty – Greater cost stability is provided to employers because the pay-as-you go operation limits the potential for employers to accumulate liabilities and not be able to pay employees their entitlements if they become insolvent or have trading difficulties.

Tax benefits – Employers can claim a tax deduction for payment of the levies, and the portable industry funds are not required to pay tax on their investment income.

⁴ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf

Potential disadvantages of LSL portability

Administration costs for employers – This factor may be pronounced during transitional periods of newly established schemes. However, recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost.

Prefunding impact on business cash flows – Smaller employers may fail to provide for LSL benefits in their accounting systems and simply pay LSL payments from consolidated revenues as required. The PLSL schemes require employers to prefund these benefit payments, which impacts the employers' cash flows.

Our research is supported by independent findings, including the McKell Institute's (Macquarie University) Report: *The Case for a National Portable Long Service Leave Scheme in Australia*.⁵ This report sought views about portable long service in Australia and through representations made by employers, employees, and administrators involved in the management of established LSL Portable Schemes, found that generally there were positive views about Portable Schemes with advantages seen to outweigh costs.

How would it work?

In the ACT, employers that have employees covered by a defined Scheme must:

- register with the LSL Authority;
- register their employees with the Authority; and
- pay the Authority a defined levy contribution (a percentage of the gross ordinary wages of those employees).

Contractors, such as working directors and sub-contractors, have the option to make their own contributions if they wish to accrue service in the scheme. However, contractor registration with any scheme is voluntary and the benefit comprises a payment instead of leave.

When a worker decides to claim some or all of their long service leave entitlement, they can lodge a claim directly with the Authority, and the Authority (not the employer) will pay the benefit.

What costs and obligations might be involved in a 'Hairdressing' Portable Long Service Leave Scheme?

Functions of the LSL Authority

As indicated in Part 2 – Background, the LSL Authority has a number of functions. As these would relate to a new Portable Scheme, such as one for hairdressers, we suggest that the LSL Authority would:

- administer the 'new' long service leave benefits scheme, in accordance with requirements established by the LSL Portable Schemes Act;
- identify and register employers and employees relevant to the 'new' scheme
- maintain records of workers service under the new scheme;
- provide registered employees with an annual statement about their service, to ensure that records are correct;
- maintain records of employer contributions to the new scheme;
- assess workers' claims for long service leave;
- make the required leave payments to employees.

Further information about the current functions of the LSL Authority can be found at <https://actleave.act.gov.au/>.

⁵ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf (2013)

Registration Requirements

We envisage that similar registration requirements will be required for a new hairdressing scheme; the LSL Authority keeps individual registers of employers and employees for each industry covered by the LSL Portable Schemes and provides registration support.

Employers for a defined industry are required to register with the Authority within one month of becoming an employer for the industry. Employers must also notify the Authority of any changes to their registration details, such as operating address or trading name, within a specified time.

Employers in defined industries are required to provide the LSL Authority quarterly returns containing the name of each employee who carried out work for them during the preceding quarter. Information about the total ordinary remuneration paid to the employee during the quarter, and the number of working days to which the remuneration relates is also required.

Employers will normally register their workers, including any apprentices, when they start work. Once registered, employees receive a letter outlining the scheme and provide their registration number.

An individual employee may apply to the Authority as a worker for a covered industry, if they believe they have not been registered. There are time limits for registration requirements and registration is mandatory for all workers in a defined industry.

Key Consultation Questions

1. Broadly speaking, is there support for mirroring the administrative requirements that have been established by the LSL Portable Schemes Act for a new hairdressing scheme?
2. Are there specific considerations that we should have regard to in the hairdressing industry in establishing arrangements for registration, and management of a scheme by the LSL Authority?
3. In considering current entitlements for the existing Portable Schemes, which range between 4 weeks and 13 weeks, what accrual leave arrangements are most suitable to the hairdressing industry, and for what period of service? For example, the Community Sector defined industry allows for 4.33 weeks of long service leave after 5 years of recorded service.

PART 5 – FURTHER INFORMATION

Projected timeframes

We plan to consider all responses received to this Consultation Paper and consolidate findings for further analysis. In doing so, we anticipate being able to provide Canberrans with our interim findings in May 2021.

If your feedback proposes that we consider expanding the defined industry beyond primary hairdressing activities, we may conduct further consultation.

Conclusion

The ACT Government is committed to supporting and protecting workers' entitlements to long service leave.

Through this Consultation Paper, we have provided the industry with an outline of how a new scheme might work for hairdressers, and what activities or roles might be considered 'relevant work' for inclusion in the scheme. It is expected that a new scheme would better support career options and prospects for workers in the hairdressing industry, as well as facilitate movement and professional development between organisations.

We invite all interested stakeholders to consider the information in this Consultation Paper and make relevant submissions, focused on the key consultation questions. Your submission has an important role in assisting us to inform the ACT Government's consideration of expansion of the portable long service leave schemes.

From: "Neill, Lisa" <Lisa.Neill@act.gov.au>
Sent: 18/05/2022 5:17 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: RE: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments
Attachments: Portable Long Service Leave Expansion Consultation Paper.docx

OFFICIAL

Hi Rebecca – thank you so much for the opportunity to get involved in this, it was very interesting!! As I mentioned I have popped it on to the new template for you and have marked up comments/edits in tracking. Please don't panic when you see it, the way tracking presents always makes it seem like there's more red than original content!!! Overall I found it to be a very solid and thought out piece with clear conclusions and as a rank outsider I could easily pick up the key points/messages and understand how you have arrived at the proposed approaches. It's obvious you and your team have put a lot of work into it!!

You'll see that I have:

- Moved 2 or 3 paras around to make it flow a little better
- Added/changed some headings
- Fixed up some inconsistencies (eg worker vs employee) and some general style edits
- Shortened some pieces and suggested where I think you can drop some content without it affecting the overall arguments and understanding
- Suggested where a little more may be needed to help those not familiar with the legislation etc to get up to speed
- Added in icons from the ACT govt suite for all industry mentions

I am happy to do a final format for you when the content is settled 😊

Please get in touch if anything isn't clear or you want to chat about any of my suggestions.

Cheers
Lisa

From: Sullivan, RebeccaJ <RebeccaJ.Sullivan@act.gov.au>
Sent: Monday, 16 May 2022 10:39 AM
To: Neill, Lisa <Lisa.Neill@act.gov.au>
Subject: FW: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments

Hi Lisa

This is the discussion paper that we are hoping you'd be able to assist with – the pictures and tone etc We were trying to follow the style guide with inclusive, plain English – not sure we have achieved that.

Very much welcome your thoughts 😊

Regards
Rebecca

Rebecca Sullivan | Director, Regulatory Policy
(02) 620 58353 | rebeccaj.sullivan@act.gov.au

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Findlay, Teo <Teo.Findlay@act.gov.au>

Sent: Monday, 16 May 2022 10:28 AM

To: Sullivan, RebeccaJ <RebeccaJ.Sullivan@act.gov.au>

Subject: CM22 47509 Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper MY comments

OFFICIAL

Hi Rebecca

I have amended the Division H: Accommodation and Food Services (no exclusions) section.

I am not settled on what we do with the 'we/ACT Government' issue and would be interested to hear Lisa Neill's thoughts.

Kind regards

Teo



ACT
Government

Portable Long Service Leave Expansion

Consultation Paper

A proposal to establish new portable long service leave schemes in the
ACT

Introduction

The ACT Government is committed to improving working conditions for all Canberrans, including supporting workers' employees' access to portable long service leave in industries with high rates of insecure employment or employee mobility.

Commented [N1]: Both employee and worker are used, I have changed all to employee

The is focused on creating and protecting good local jobs. Jobs in health, education, construction, retail, renewable energy, tourism and hospitality, and technical, scientific and professional services. This includes pursuing an ambitious and progressive legislative program.¹

Long service leave enables employees to recover their energies and return to work renewed, refreshed, and reinvigorated, after long periods of service. There are many well-recognised positive impacts/benefits from supporting long service leave for employers and employees, including improved employee health and wellbeing, which in turn contributes to improved productivity.

For more than two decades, this jurisdiction has advanced nation-leading reforms that have ensured Canberra remains one of the most liveable, inclusive and progressive cities in the world – and that will continue in 2022.

The Long Service Leave Portable Schemes (pPortable sSchemes) in the ACT support enable long service leave entitlements to be accumulated on an employee's length of service in a particular industry, rather than their length of service with a single employer. The portable schemes allow for employees to transfer from employer to employer (to 'port' their entitlements) without losing the service-long service leave entitlements they have already accrued within the covered industry - to 'port' their entitlements.

In the ACT workers in the building and construction, contract cleaning, community sector, and security industries are covered by the portable schemes.

The ACT's economic recovery plan 2022 is focused on creating and protecting good local jobs. Jobs in health, education, construction, retail, renewable energy, tourism and hospitality and technical, scientific and professional services.

Long service leave enables employees to recover their energies and return to work renewed, refreshed, and reinvigorated, after long periods of service. There are many well-recognised positive impacts to supporting long service leave for employers and employees, including improved employee health and wellbeing, which in turn contributes to improved productivity.

In recognition of this To further support employee access to fair and equitable employment entitlements, the ACT Government has initiated a review of long service leave coverage under the Long Service Leave (Portable Schemes) Act 2009, with a view to identifying additional occupations or industry sectors that should be provided access to portable long service leave. Amending the LSL Portable Schemes is another example of the ACT Government supporting the workers' access to fair and equitable entitlements.

¹<https://www.andrewbar.com.au/news/latest-news/our-plan-for-2022/>

The Government We are now undertaking a consultation process to ~~is seeking your views~~ feedback about the ~~possible~~ on this proposal to expansion of the ~~p~~Portable ~~s~~Schemes and ~~welcomes~~ inviting comments views from the ACT community, including employees, ~~stakeholders including workers, unions, employers, unions, industry groups~~ -and peak bodies.

Purpose

The purpose of this consultation is:

1. To ~~consult~~ seek feedback on the proposed expansion of ~~portable the~~ Long ~~s~~Service ~~l~~Leave Portable ~~s~~Schemes, with ~~particular consideration~~ to the following industries:
 - personal and other services (~~which~~ includes hairdressing and beauty services)
 - accommodation and food services (~~which~~ includes contract catering)
 - rental, hiring and real estate services
 - administrative and support services (~~which~~ includes travel agency services and general administrative support services including labour hire)
 - retail trade.
2. To invite ~~comment~~ views on other ACT occupations or industry sectors that should also have access to portable long service leave.

How can I be involved?

Making a submission

This consultation paper seeks views on expanding the *Long Service Leave (Portable Schemes) Act 2009* to industries such as the hairdressing and contract catering.

Written submissions are invited by 17 June 2022 and should be ~~sent by~~ emailed to wsir@act.gov.au.

As part of our consideration submissions may be published; ~~however, if, If~~ you do not wish ~~publication of your submission to be published or made publicly available~~, please mark your ~~submission~~ as confidential.

~~Is there a contact for more information too??~~

Background

How portable schemes work

I think a short section here on the basics of how they work would assist in understanding the benefits section below - eg they are industry funds managed by an industry super fund, employers pay into them as they go. A question for me is that does it mean employees don't get to choose their fund – they have to use the industry fund to participate/can they elect not to join/if you have some employees in and some out doesn't that increase the admin and costs for employers??

The benefits of portable schemes

Portable long service leave schemes were as introduced to mitigate these inequalities by allowing worker-employees to move between employers in a covered industry without losing long service leave credits for time worked in that industry.

Workforce mobility is high with almost one in five ~~workers~~ employees employed by their current employer for less than one year.² This has led to a relatively low prevalence of long-term employment relationships, with around three in four workers working with their employer for less than 10 years (the usual qualifying period for long service leave). This structural trend away from long-term employment is limiting access to long service leave for a large portion of the workforce.

This limitation is particularly pronounced for women. This is because traditionally, women disproportionately take on ~~carer's~~ caring responsibilities,³ and subsequently report work/life conflict significantly more than men.⁴ Women who have children are also more likely to take extended (unpaid) breaks from employment,⁵ which hinders accumulation of ~~traditional~~ long service leave benefits.

By recognising and encouraging loyalty and professional development within these industries, the schemes benefit employees by facilitating sustainable career paths. The schemes in turn benefit employers and consumers by encouraging the retention of skilled workers within the industry.

~~Portable long service leave was introduced to mitigate these inequalities by allowing workers to move between employers in a covered industry without losing credit for time worked in that industry.~~

~~In considering how best to design a new portable scheme we are aware there may be advantages and disadvantages of a scheme for employers and employees. Research suggests there are a number of well-~~

² Australian Bureau of Statistics, Labour Mobility, Cat. 6209.0 (2012).

³ Tanya Carney, 'The Employment Disadvantage of Mothers: Evidence for Systemic Discrimination' (2009) *Journal of Industrial Relations* 51(1), 113-130.

⁴ Natalie Skinner et al, *The Big Squeeze: Work, home and care in 2012* (2012); Centre for Work and Life, *Australian Work and Life Index 2012* (University of South Australia, Adelaide).

⁵ Above n 4.

Commented [NL2]: Apologies! I changed footnote 1 to a hyperlink so this is footnote 1 now, but I'm not sure how to renumber!

established common themes in considering the benefits and disadvantages of portable long service leave schemes. Some of these are outlined in the table below.⁶

Commented [N13]: The tables are difficult to format correctly - once the version is final I will correct before we publish

Advantages of portable PLSL schemes

| | |
|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retention of workers employees | Portable LSL schemes address challenges in help to retaining employees in industries with high levels of labour mobility. |
| Equity | Workers Employees in highly casualised or contract roles otherwise have no practical access to long service leave. |
| Mobility and flexibility | Workers Employees have more capacity to move between employers or to take short periods out of employment to meet commitments such as caring responsibilities. |
| Productivity and work environment | The capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work has advantages for boosting productivity and morale. |
| Employee attraction | A benefit for 'good employers' as employees feel less compelled to stay in poorly managed workplaces in order to meet long service leave LSL eligibility requirements. |
| Non-compliance problems reduced | Employers pay for entitlements as they accrue. |
| Administrative benefits Reduced administration for employers | Industry funds effectively remove from employers the take responsibility for administration from ering LSL arrangements and payment for employees. |

⁶ The information in this table has been adapted for this purpose from source material published by the McKell Institute - https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf

Cost certainty Greater cost stability is provided to employers because the pay-as-you-go operation limits the potential for employers to accumulate liabilities and not be able to pay employees their entitlements they cannot pay if they become insolvent or have trading difficulties.

Tax benefits Employers can claim a tax deduction for payment of the levies, and the portable industry funds schemes are not required to pay tax on their investment income.

Potential disadvantages of portable LSL portability schemes

Administration costs for employers This factor may be pronounced during transitional periods ~~of~~ newly established schemes. However, recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost.

Prefunding impact on business cash flows Smaller employers ~~may may fail to~~ provide for long service leave LSL benefits in their accounting systems and simply pay LSL payments from consolidated revenues as required. ~~The PLSL~~ Portable schemes require employers to ~~prefund pay as they go~~ these benefit payments, which impacts the employers' cash flows.

The Case for a National Portable Long Service Leave Scheme in Australia.⁷

This report sought views about portable long service in Australia and through representations made by employers, employees, and administrators involved in the management of established LSL ~~p~~Portable ~~s~~Schemes, found that generally there were positive views about ~~p~~Portable ~~s~~Schemes with advantages ~~seen-perceived~~ to outweigh costs.

~~By recognising and encouraging loyalty and professional development within these industries, the schemes benefit employees by facilitating sustainable career paths. The schemes in turn benefit employers and consumers by encouraging the retention of skilled workers within the industry.~~

Broadly speaking, access to long service leave in the Territory is established by either:

- ~~the Long Service Leave Act 1976 (1976 LSL Act), which provides for the traditional single employer model~~
- or
- ~~the Long Service Leave (Portable Schemes) Act 2009 (LSL Portable Schemes Act), which maintains leave provisions within more mobile industries.~~

⁷ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf (2013)

Long Service Leave (Portable Schemes) Act 2009 (ACT) in the ACT

Broadly speaking, access to long service leave in the ACT is established by either:

- the Long Service Leave Act 1976 (LSL Act), which provides for the traditional single employer model or
- the Long Service Leave (Portable Schemes) Act 2009 (Portable Schemes Act), which maintains leave provisions within more mobile industries (defined industries).

~~Prior to the introduction of the Territory's LSL Portable Schemes Act, provides long service leave for many workers/employees in defined industries who are/were ineligible for leave entitlements under the 1976 LSL Act as they did not remain with the same employer for a long enough period. It enables employees in contrast with the 1976 LSL Act, the LSL Portable Schemes Act allows workers who choose to remain in defined industries to accrue long service leave entitlements through continuous industry service, rather than through service with one employer.~~

Commented [NL4]: Should this be ineligible for long service leave? I think they still had the entitlement but couldn't use it?

In the ACT, employers that have employees covered under ~~the a p~~Portable ~~s~~Schemes must register with the ACT Long Service Leave Authority (LSL Authority) and pay a levy contribution to the ~~a~~Authority based ~~on~~of the gross ordinary wages of those employees.

~~The LSL Authority has a number of functions in . As these would relation e to a new portable schemes, or expansion of the coverage of the existing Schemes, the LSL Authority would:~~

- identify and register employers and employees ~~relevant for to~~ each scheme
- maintain records of ~~workers-employees'~~ service under the scheme
- provide registered employees with an annual statement about their ~~service~~long service leave, to ensure that records are correct
- maintain records of employer contributions to the scheme
- assess ~~workers'-employees'~~ claims for long service leave
- make ~~long service the required~~ leave payments to employees.

Commented [NL5]: Is claims the right word, or is it requests or applications?

Further information about the ~~current functions of~~ the LSL Authority is available on the authority website. ~~y~~ can be found at <https://actleave.act.gov.au/>.

~~In contrast with the 1976 LSL Act, the LSL Portable Schemes Act allows workers who choose to remain in defined industries to accrue long service leave entitlements through continuous industry service, rather than through service with one employer.~~

Commented [NL6]: See my comment above how it works for the employee and see if anything needs to be added here about the ACT specifically

Contractors within ~~defined the covered~~ industries have the option to make their own contributions if they wish to accrue service in ~~the a~~ scheme, ~~however, contractor registration is voluntary,~~ and the benefit ~~comprises is~~ a payment instead of leave.

When an employee worker decides to claim some or all of their long service leave entitlement t, they lodge a claim directly with the LSL Authority, and the aAuthority (not the employer) will pay the benefit.

This is different to liability arrangements under the 1976 LSL Act—as while where an employer is required to retain a contingent liability over the duration of employment for all employees, no regular levy is payable, and it is up to the employer to administer and ensure funds are available.

Defined industries in the ACT

The LSL Portable Schemes Act currently supports designated workers within four defined industries known as Covered Industries in the ACT.

- building and construction
- contract cleaning
- community sector
- security.

Information about the portable schemes for each industry is provided below.



Building and Construction

Building and construction industry workers employees registered on or after 1 January 1997 are entitled to **13 weeks of long service leave after ten years of recorded service** in the industry, and continue to accumulate 1.3 weeks of leave for every year thereafter. The applicable levy for the building and construction industry is currently 2.10 per cent.

Workers Activities performed by employees for the purposes of coverage under the Building and Construction Schedule are defined by relevant work, which describes the activities covered workers perform. These include activities like in this scheme include: construction, renovation, alternation, repair and demolition of building works, roadworks and works for the storage or supply of water.



Contract Cleaning

Contract cleaning industry workers employees registered on or after 24 June 2000 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The applicable levy for the contract cleaning industry is currently 1.20 per cent.

Activities performed by employees in this scheme include Workers for the purposes of coverage by the Contract Cleaning Schedule are also defined by relevant work. This work includes work that is undertaken for bringing premises into (or maintained as) a clean condition. From 1 July 2016 drivers and sorters for waste management facilities under contract with the ACT Government are also entitled to access the Portable sSchemes.



Community Sector

Community sector industry ~~workers-employees~~ registered on or after 1 July 2010 are entitled to **4.33 weeks of long service leave after five years of recorded service** in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The ~~applicable~~ levy for the community sector industry scheme is currently 1.20 per cent.

~~Activities performed by employees in this scheme include Community Sector workers are defined by the LSL Portable Schemes Act on the basis of industry or sector activities that are carried out under relevant laws, or for the purposes of residential aged care or community aged care services. The community sector industry captures all~~ All employees-workers in the industry within the industry are covered, as a whole – for example, the chef and ~~the~~ administration staff of a child care centre ~~are covered~~.



Security

Security industry ~~workers-employees~~ registered on or after 1 January 2013 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry, and continue to accumulate 0.867 weeks of leave for every year thereafter. The ~~applicable~~ levy for the security industry scheme is currently 1.07 per cent.⁸

~~Activities performed by employees in this scheme include activities~~ Workers in the Security Industry are covered where work is identified by the relevant law (the *Security Industry Act 2003*) as activities performed by the Security Industry.

~~The Building and Construction Scheme came into effect in 1981, the Contract Cleaning Scheme in 2000, the Community Sector Scheme in 2010, and the Security Scheme in 2013. All schemes are prescribed in schedules to the Act.~~

⁸ The ACT Long Service Leave Authority Governing Board appoint an actuary to investigate the state and adequacy of the money of the Authority at least once every three years. This includes whether any reduction or increase is necessary in the rates of levies paid to the Authority by employers or voluntary members.

Identifying new industries for inclusion

New 'covered' industries – Our thinking and considerations

In July 2020 the ACT Legislative Assembly resolved to:

- work with Hair Stylists Australia, the ACT Hairdressing Industry, employers, employees, employee bodies and registered training organisations to determine how to include hairdressing as a in the LSL Portable Schemes and
- investigate extending the LSL Portable Schemes to other non-public sector industries.

Subsequently, in November 2021, the ACT Legislative Assembly called on the ACT Government to:

- expand the LSL Portable Schemes to the contract catering industry and
- investigate further industries for inclusion as a in the LSL portable schemes.

Exploring ways to expand the LSL Portable Schemes to the hairdressing industry and contract catering industries These actions allowed prompted us to start thinking about improving access to long service leave entitlements to more workers-employees in the ACT across the Territory.

In doing so, We have considered a range of supporting research and material, including worker mobility data released by the Australian Bureau of Statistics, and sought to respect the objectives and principles of the LSL Portable Schemes Act, which can be demonstrated through consideration of by considering:

- the transient nature of the workforce, and the mobility of employees in different industries and
- the composition and diversity profile of an industry, looking at industries with:
 - high part-time/causal workers, who typically experience lower wages
 - higher rates of short-term contracts and
 - industries with a disproportionate number of female employees.

Drawing on the objectives and principles of the LSL Portable Schemes, and information about how the Schemes currently work, we can make some evidence-based assumptions about the work patterns, availability of employment choices and influencing factors for people that work in industries experiencing high mobility.

Looking at workforce mobility and factors for consideration

In 2020 the Australian Bureau of Statistics released a report into job mobility which indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the

12 months to February 2020⁹. Our analysis shows us that mobility remained highest for professionals, at 21.7% with technicians and trades, clerical and administrative and sales workers-employees reporting a moderate level of mobility in comparison.¹⁰

Across industries, hospitality workers-employees were identified as the most likely to change jobs in 2020, with 14.3 per cent % changing their employer or business; followed by workers-employees in rental and real estate (11.4 per cent)%, administrative services (10.5 per cent)%, and Retail Trade (9.3 per cent)%.

The ABS report also showed high job mobility rates among community and personal service workers-employees noting that almost 10 per cent of workers had changed employers in the reporting year.

Given that seven years is the usual qualifying period for workers to access to long service leave in the ACT Territory. This tells us, this trend indicates that many workers-people may not stay in continuous employment with the same employer long enough to access accrue long service leave entitlements, resulting in fewer workers being eligible to access long service leave entitlements.

Workforce mobility and women

However, the reasons for job mobility may be varied and not entirely attributed to the individual's decision.

The material shows us that high mobility industries have several things in common including:

- a higher ratio of young people who may experience particular influencing factors that impact-affect their ability to remain with a single employer, such as family and caring responsibilities, study and professional development opportunities and the inherent transient nature of business within these industries themselves.
- In many cases these industries also include a higher number of women than other industries. When we examine the who, across their working life may trends around women in the workforce, we see that women across careers tend to move in and out of the workforce for a number of reasons.

Women represent more than 50 per cent of employees in administrative and accommodation and food services, more than 70 per cent of employees in clerical and administration, almost 60 per cent in retail sales and more than 70 per cent in community and personal services. Less than 40 per cent are managers.¹¹

Women under the age of 35 represent more than over 55% per cent of employees in industries in retail, accommodation and food services industries, with while women over 45 being account for

⁹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

¹⁰ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

¹¹ <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#data-download>

almost 60 per cent of these employees% - of those employed in these industries, with More than over-60 per cent of women remain% employed in these industries once they reach 55 years of age.

The labour force participation rate for people with children under five is 65.5 per cent% for women compared with 94.4 per cent% for men, with women representing over 50% of workers in administrative and accommodation and food services, over 70% employees in clerical and administration, almost 60% in retail sales, and over 70% in community and personal services, compared with less than 40% as managers.¹² It can be concluded that women This could imply that women are exiting the workforce to care for children, often leaving before accruing the required service period of service required for long service leave. When they and, then return to the workforce, often in the same industry, without the ability to they cannot revive their previous service history.

In 2020, women were also more likely to continue to work as they got older compared with earlier years. For example, the employment-to-population ratio for 65 year old women in 2020 (35.6 per cent%) was more than three times higher than similar aged women in previous years (less than 7% in 1980, and around 10% in 1966 and 2000).¹³

Commented [NL7]: I'm not sure how this is relevant to portable LSL - you could probably remove it.

Our conclusions

Drawing on this data, we We have identified five industries that align with the for which the principles and intent of pPortable sSchemes principles, combined with -and demonstrate insecure workforce mobility employment characteristics, means they should be considered for possible inclusion within the LSL Portable Schemes, portable long service schemes:

- these are: personal and other services (which includes hairdressing and beauty services)
- accommodation and food services (which includes contract catering)
- rental, hiring and real estate services
- administrative and support services (which includes travel agency services and general administrative support services including labour hire) and
- retail trade¹⁴.

To allow us to identify the workers within each of the identified industries we We have explored the used of the Australian and New Zealand Standard Industrial Classification (ANZSIC) to identify employees within these industries, as the preferred classification system.

The ANZSIC is the standard classification system used in Australia and New Zealand to collect, compile and publish information about the operation of industries. It enables information about businesses, including employee data, to be grouped by reference to their industry and supports comparisons between industries.

¹² <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release/data-download>

¹³ <https://www.abs.gov.au/articles/changing-female-employment-over-time#:~:text=Women%20made%20up%20almost%20half,when%20women%20usually%20have%20children.>

¹⁴

ANZSIC is a hierarchical classification system with four levels, namely Divisions (the broadest level), Subdivisions, Groups and Classes (the finest level). At the Divisional level, the main purpose is to provide a limited number of categories which provide a broad overall picture of the economy and are suitable for the publication of summary tables in official statistics. The Subdivision, Group and Class levels provide increasingly detailed dissections of these categories for the compilation of more specific and detailed statistics.

Commented [N18]: Don't think you need to include this level of detail as I have hyperlinked above and anyone wanting it can look it up themselves

The information below explains how we have used ANZSIC to identify which employees in the five industries we propose be covered by a portable scheme. One of the challenges with the ANZSIC is that we will not always be able to rely on the highest level of classification – as such we have assessed relevant classes within each sub-division and division to determine the highest level that should be captured by the expansion proposal, without placing unnecessary regulation on industries that do not meet the principles of the LSL Portable Schemes. This work is discussed further in greater detail below as we identify each of the proposed industries for expansion.

Using the ANZSIC as the basis for describing who will be covered by our proposed expansion of the LSL Portable Schemes enables us easily to communicate with industry which industry and in turn which workers, will be covered.

Personal and Other Services (incorporating hairdressing and beauty services)

Proposing to cover ANZSIC Division 5: Personal and Other Services (with some exclusions)



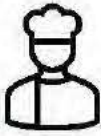
When we assessed this classification covers a breadth of activities and occupations including at the Division, Sub-Division, Group and Class level for Personal and Other Services, which include hairdressing and beauty services, we considered expansion at the Divisional level with some exclusions would maximise the benefits of the Schemes, align with the core principles of the LSL Portable Schemes Act and minimise the risk of inadvertently capturing workers who are not vulnerable to losing access to long service leave entitlements. We are proposing to exclude

Commented [YM9]: I think I have already suggested much of this section be deleted – but I note the Intro section that lists the industries of interest refers to hair and beauty – this whole section presupposes our interest is personal services sector – readers won't get why we are writing half a page on excluding household staff, I understand its because of where they sit in the ANZSIC structure – but its tail wagging the dog even if they manage to appreciate the relationship.

Commented [A10R10]: our concern is that if we do not discuss the exclusions, are we misleading the relevant industries?

For the purposes of this consultation, we propose to define the workers for the purpose of inclusion within the LSL Portable Schemes as those identified by ANZSIC Division 5, with some exclusions.

We are conscious that at the Division level there are a range of services that are unlikely to meet the principles of the Portable Schemes – this includes a broad range of personal services including religious, civic, professional and other interest group services; selected repair and maintenance activities; and private households employing staff because they do not align with the principles and intent of portable schemes or have workforce mobility considerations as outlined previously. As such, it is not our intention to include these workers within the proposal.



Accommodation and Food Services (incorporating contract catering)

Proposing to cover all of ANZIC Division H: Accommodation and Food Services (no exclusions)

When we looked at expanding the Portable Schemes to the contract catering industry, we noted that occupations within the Accommodation and Food Services Division (Division H of ANZSIC) are similar across the broader Divisional level, in that Occupations in this division they have common characteristics and perform similar functions including:-

The Accommodation and Food Services Division includes workers mainly engaged in:

- providing short-term accommodation for visitors
- providing food and beverage preparation services and
- serving of meals and beverages for consumption by customers.

As such we consider it viable to take advantage of cover the entire the division classification based on the likelihood of worker-employee mobility across occupations making up in the division. It is also our view more likely that employees in occupations in this division within the Accommodation and Food Services Division may cease employment with one employer due to reasons beyond their control, such as due to the closure of businesses, but seek to remain within the industry itself.

To limit the expansion of the LSL Portable Schemes only include to Contract Catering Services would mean the expansion would only capture a small number of businesses and worker-employees, including a majority of small businesses that may operate alongside workers-employees performing the same services for within the same employer. This could increase the inherent disadvantage facing some workers-employees in the Food Services industry who would otherwise seek to remain within the industry.

As such, we are of the view that Division H would appropriately capture workers who should be considered for coverage, based on alignment with the principles (gender balance/mobility etc). This means workers within those industries will be entitled to long service leave entitlements under the expansion proposal.



Rental, Hiring and Real Estate Services

Proposing to cover all of ANZIC Division L: Rental, Hiring And Real Estate Services (no exclusions)

This Rental, Hiring and Real Estate Services Division includes workers-employees mainly engaged in renting, hiring, or otherwise allowing the use of tangible or intangible assets, and workers-employees providing related services.

Similar to the hairdressing and beauty services industry, workers within the rental and real estate industries sit within a broader Division under ANZSIC.

We consider it viable to cover the entire division because the In considering the expansion of the Portable Schemes to this sector, we are considering expansion to the Division level. This is on the basis that occupations that make up the division have similar primary activities and rates of mobility across the industry. Expansion of the schemes to include (Division L: Rental, Hiring And Real Estate Services) would support attraction, retention and provide leave entitlements to workers who may otherwise miss out.

Commented [NL11]: I think this could apply to all? Perhaps take it out of here and add it under the industry dot points at the top of this section



Administrative and Support Services



Proposing to cover ANZIC Division ~~Division N~~ – Administrative and Support Services (with some exclusions)

This ~~e~~ Administrative and Support Services ~~d~~Division includes ~~workers-employees~~ mainly engaged in performing routine support activities for the day-to-day operations of other businesses or organisations.

The activities undertaken by ~~workers-employees~~ in this division are often integral parts of the activities found in all sectors of the economy. Recent trends have moved more towards the outsourcing of ~~such non-core~~ these activities. ~~The workers classified~~ Employees in this division ~~mostly~~ specialise in one or more of these activities and can, therefore, provide services to a variety of ~~clients~~ employers.

Expansion of the LSL Portable Schemes to Division N - Administrative and Support Services, would provide access to entitlements for a cohort that may be disadvantaged, in that they are not able to access leave entitlements because they do not achieve the necessary amount of service with a single employer before changing jobs to secure better work conditions.

Commented [NL12]: Don't think you need this as it repeats arguments already made in the document

The occupations proposed for inclusion in this industry may undertake work in industries currently covered under the LSL Portable Schemes, but be excluded under the current provisions.

Commented [NL13]: Same comment as above

We are proposing to exclude In assessing Division N – Administrative and Support Services against the principles of the Portable Schemes, and considering mobility data, we do not intend on expanding coverage to the to-building cleaning and pest control or packages services, as it is our view that the primary activities for these occupations and workers, do not represent the same levels of mobility targeted by this review, because they do not align with the principles and intent of portable schemes or have workforce mobility considerations as outlined previously.



Retail Trade

Proposing to cover ANZIC Division G: Retail Trade with some exclusions

Division G: Retail Trade (with exclusions)

This ~~e~~ Retail Trade ~~d~~Division includes ~~workers-employees~~ mainly engaged in the purchase and/or on selling, the commission-based buying, and the commission-based selling of goods, without significant

transformation, to the general public. ~~The Retail Trade Division~~ It also includes ~~workers-employees~~ that purchase and on-sell goods to the general public using non-traditional means, including the internet.

~~Noting that~~Because the majority of ~~workers-roles~~ within retail trade ~~meet-align with~~ the principles and intent of the ~~p~~Portable ~~s~~Schemes, and have a relatively high degree of mobility we propose ~~to include the Division G with minimal exclusions for~~.

~~We propose to exclude non-store retailing and retail commission-based buying~~ ~~classes from our expansion proposal on the basis that~~ our understanding is that these ~~workers-employees~~ do not experience similar ~~instances of mobility or vulnerability as shown in the other classes-others~~ in this division.

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 23/03/2021 6:13 AM
To: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Subject: RE: early thinking re PLSL coverage issues

OFFICIAL

Hi Rebecca

Thanks for sharing your thoughts on this. As discussed previously, my biggest concern in relation to the current scheme design is around the inconsistency in how we define industries i.e. 'what is the community sector'.

I am interested to talk more about how we might define new/expanded coverage industries under umbrella schemes by grouping them in industry/sectors that loosely have similar characteristics, possibly with ANZSIC codes as the starting point. Given the feedback Ellen has passed on from conversations with the Authority and Governing board, it is my view that this approach may reduce the likelihood of circumstances where there is contention around what workers are included under a particular scheme and what workers are not.

I also think, although not based on ANZSIC codes, the Contract Cleaning is the closest we've come to having a functioning umbrella scheme (cleaning and waste work are not the same industry in my view). However, the schedule is clearer with respect to workers that are included and workers that are not i.e. the manager that sits in the office at suez isn't included in the scheme because he doesn't do the work described under 'what is cleaning work?'.

I have also spent some time looking at the Victorian legislation and unfortunately, it is not going to be particularly helpful for us. Although, the way they define the community services industry is simpler.

Kind regards

Teo

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From: Sullivan, RebeccaJ <RebeccaJ.Sullivan@act.gov.au>
Sent: Tuesday, 23 March 2021 4:48 PM
To: Findlay, Teo <Teo.Findlay@act.gov.au>
Subject: early thinking re PLSL coverage issues

OFFICIAL

Hi Teo

My apologies for not making time to chat about this in preparation for our think thank tomorrow – but hopefully my thoughts are useful re our 'coverage' conversation

Building and Construction

My reading is that building and construction coverage is defined by activities – and quite definitively

- The test appears to be – do you do this type of work – and if so, you're covered. (or someone supervising this type of work).

This type of contained coverage could be used for hairdressing/beauty industry – but we risk leaving activities out

Cleaning

In contrast, the 'cleaning' industry coverage is established by defining what cleaning is – a wholistic concept, rather than individual activities. There is also the introduction of the 'main component' requirement – so that coverage is applied, or industry is within the jurisdiction of the coverage, where the work is the only or main component undertaken on or in a premise (so that incidental cleaning isn't captured)

The additional 'waste' definition has been required as it is not neatly represented by cleaning – which could be similar to hairdressing/beauty – having to define each.

There could be difficulties with this approach for hairdressing/beauty industry as the industry is quite varied in activity in my reading of the ANSIC code. We haven't defined 'main component' either (well, I couldn't find it) – which would likely result in questions about what %% of my time is my main component.

Community sector

This is probably the most confusing for readers (in my opinion) – coverage is afforded to 'industries' that fall within jurisdiction of particular legislation, and then for different types of services depending on the year, and not overly useful in descriptions – so not defined by activities, except in certain circumstances.

I would be reluctant to define an industry like this – you're in, if you are in an industry that does this, but only in these circumstances, unless you do this as well – very confusing – particularly when the other definitions use the 'workers' and the 'work' to define, not the industry (industry as secondary).

If we followed this design, we'd have to carefully construct the definition of the hairdressing and beauty industry – or personal care industry – by the activities – and then apply that to the workers.

This could avoid the problem of having to also define 'main component'

Sorry that's as far as I got today – had a very long meeting with Ellen re more work lol But we'll speak more tomorrow, hope you've had a good day

Cheer

Rebecca

Rebecca Sullivan | Director, Regulatory Policy

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Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

**WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE**



From: "Sullivan, RebeccaJ"
Sent: 04/05/2021 2:56 AM
To: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Subject: RE: Long Service Leave Portable Schemes - Internal Briefing - Revised timeline - Proposed Industries/Occupations for Expansion

UNOFFICIAL

Hi Teo

Thank you for this, and it wasn't as rough as I think you may have thought – but there are a few things I'd like to see included. It is probably best to have a conversation so I'll set up some time tomorrow but for your information I'm thinking something like the below:

1. I do think we would benefit from articulating the **purpose of the consultation**, which would perhaps give a lead in to the discussion about mobility and relevant industries.

Why is it that we are consulting, there is an agreed undertaking on participative government and transparency in decision making, there are benefits in validating policy intent and considerations, there are benefits in articulating policy proposals for socialising government intended purpose etc

From each of these suggested headings (there are likely to be others that you will identify) – we can express what are concerns are by not consulting, or consulting in a way that is not genuine – or even, articulate intended genuine consultation as purposeful – the reason we're wanting to conduct consultation to verify our thinking, which allows us to identify (in turn) the targeted stakeholders.

For example – in considering expanding the scheme to hospitality (as an example) – we could indicate that our consultation process will allow this group to respond to our intention, and key questions about mobility - noting that data on mobility is out-dated or difficult to align with the ACT experience (given the size of our market).

2. **Strengthen scheme design approach**

When discussing the scheme design, I was a little confused about paragraph 16:

16. In considering expanding the LSL Portable Schemes Act, we recommend a classification framework for organising data about businesses by grouping business units carrying out similar activities be used.

Noting your comment at para 18, are you suggesting that the scheme design should be based on nominated 'codes' ie ANZSIC? As included in the schedule – rather than a description of activities?

After talking with Greg following the work he did on silica dust occupations – I understand that the ANZSCO code framework covers all the ANZSIC detail at a higher level – is your intention to break the covered activities down further than the industry level provided by ANZSCO. I understand ATO uses ANZSCO – and my reading suggests that it is recognised as the skill based occupational classification system, where as ANZSIC allows for greater statistical analysis.

Either way, I think we need to confirm which source data we will rely on – and have a reason for not using the other, or using a combination of the two – and I suggest that this analysis is our responsibility, not necessarily up for Michael or Ellen to decide.

ANZSIC/ANZSCO is one way to capture included activities/occupations/industries – the main focus should be **coverage of the design** (as per your comment at 18).

I don't think either Ellen or Michael will tell us what that looks like as such – and will rely on us providing options in order to make a decision. As such, I would like to see a bit more discussion about what possible inclusion points we could use in the scheme design section of the brief. Perhaps drawing on both ANZSIC and ANZSCO as the sources – but not the definitive justification: possibly something like:

3. **Elements of scheme design suggestions**

- Scheme design, retain the discussion about current design features, suggested retention for alignment and not creating unnecessary difference burdening the LSL Authority – identify the key features (as at para 14 and 15) – and then what the difficulties are in following this structure

For example – if we retain the structure:

- a. Employed by a covered industry and
- b. Performs work within covered industry

Every time we have a new industry we have to amend the Act (unless the schedule is by determination??) – **explore the alternatives**, are there any?

Is there a different way of approaching (this is the policy creation bit) – outside a universal scheme - I don't get the impression that we have support for all workers being able to register for portability – and that we want to contain it by some parameters, either recognised industries, or recognised mobility.

We've done a jurisdictional analysis I'm sure, and a comparison of other international jurisdictions – was any of this helpful or have standouts ?

Also, each of our policy elements should tie back to our policy intent – which is to provide coverage to workers and support access to long service leave as a recognition of professional service and contribution to an industry (in the absence of a single employer) - and we're not targeting the high income professional services (like highly paid ICT contractors).

- ### 4. **Analysis for inclusion - and the rules of inclusions** (what are the minimum requirements to be considered for portability of long service leave – are there any, are there many?)

In looking at your table (and I think we can remove the not working row) – we have already included some of these industries/occupations under the scheme and should either indicate this in the table, or remove them. That will leave us with a selection of

occupations regarded as mobile- of that selection, which fall within the scope of our policy intent?

This then allows us to consider both mobility and retention, and help us define our policy consideration and rules for inclusion – for example:

Policy intent: support worker entitlement to long service leave with longevity in industry to give recognition to professional contribution and remove barriers of disadvantage associated with non-public sector worker industries

Nominated industry: sales worker - real estate

Included activities either by data source or description: such as ANZSIC description or ANZSCO or combination – real estate agent ANZSCO/SIC number xxxxx

Supporting data: ABS report on mobility, AI Group report on retention/mobility (supports/affirms/ignores etc) – industry specific data – anything from the industry itself, purpose of consultation etc

Reason for inclusion: agents deliver a professional service to industry, similar activities are undertaken in the public service (leasing/property valuation/procurement of buildings etc) and public service workers are entitled to long service leave for their professional service, so private ones should be also – noting that the market is small, and agents move to gain professional skills and opportunities (same as moving to different public service agencies for promotion or transfer, gain new skills, different working conditions)

And perhaps do something like this analysis for each of the possible industries – unless this has already been done of course – then we can take that analysis and use it to inform our approach.

Ideally we will have gone through all possible industries to assess viability for inclusion – and made an assessment against each, noting the framework of our policy intention – and it is this assessment that forms our policy position – ie we think real estate agents should be included in the new scheme coverage, as these professionals have recognised mobility, and remain in the industry for at least 10 years, and make a professional contribution to the industry that should be recognised. Long service leave is a way of recognising and rewarding the longevity of service to an industry – the discretionary effort that a long time professional employee puts into a business or industry – all the uncaptured unpaid for minutes each day – all the times that workers put in that extra effort over the weekend to solve something, or make something better – but don't put in a time sheet for it.

Once we have our industry analysis – we can see if they can be grouped or categorised in a useful way to simplify a statutory scheme design. The obvious option is to just nominate each included industry by code – but we might have 20 codes. Is there an alternative to this? Is there a higher level description that we can rely on? Or is nominating by code the most efficient way of doing this.

I'm hoping that this makes sense on some level – but will discuss in more detail with you tomorrow. Thanks again – the paper was really quite good.

Regards
Rebecca

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Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Findlay, Teo <Teo.Findlay@act.gov.au>

Sent: Friday, 30 April 2021 4:14 PM

To: Sullivan, RebeccaJ <RebeccaJ.Sullivan@act.gov.au>

Subject: Long Service Leave Portable Schemes - Internal Briefing - Revised timeline - Proposed Industries/Occupations for Expansion

UNOFFICIAL

Hi Rebecca

By the time you see this it might be **Sch 2.2(a)(ii)**.

Please find attached a draft brief outlining a revised timeline for the long service leave portable schemes project, as well as proposed target expansion groups.

Apologies for sending this so late on a Friday afternoon. Although it has been a crazy week, I could have managed this a bit better.

Again, thank you for your time this afternoon. It really is appreciated.

Speak Monday.

Kind regards

Teo

From: "Lukins, Ellen"
Sent: 18/05/2022 12:08 PM
To: "Tracy Savage" <Tracy.Savage@actleave.act.gov.au>
Cc: "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: Meeting With Minister
Attachments: Attachment A_Long Service Leave Portable Schemes Expansion - Consultation Paper.DOCX

OFFICIAL: Sensitive

Hi Tracy

Sorry, I had hoped to provide this earlier this week.

Please see attached the draft public consultation paper, noting the comments below from Michael that it focusses on the question of coverage as opposed to scheme design.

Happy to chat/receive comments on the draft paper.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
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Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Tracy Savage <Tracy.Savage@actleave.act.gov.au>
Sent: Wednesday, 18 May 2022 11:00 AM
To: Young, Michael <Michael.Young@act.gov.au>
Cc: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: Meeting With Minister

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OFFICIAL

Sounds good – thanks. Not a problem if it's not ready, but I thought it might be good to have a sense of the scope, etc for the meeting.

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Wednesday, 18 May 2022 10:20 AM
To: Tracy Savage <Tracy.Savage@actleave.act.gov.au>
Cc: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: Meeting With Minister

OFFICIAL

That should be doable – in recent edits Ellen and I have asked for it to be cut right back – and should be quite a short and direct paper in its next version.

Thinking is to focus the public consultation on the question of scheme coverage and to keep the scheme design work in the background and to engage with you and the Board separately on that.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Tracy Savage <Tracy.Savage@actleave.act.gov.au>
Sent: Wednesday, 18 May 2022 10:01 AM
To: Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Meeting With Minister

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Michael,
just wondering if you were close to sending through the consultation draft? It might be useful to have before the meeting with the Minister.

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Wednesday, 18 May 2022 9:34 AM
To: Tracy Savage <Tracy.Savage@actleave.act.gov.au>
Subject: RE: Meeting With Minister

OFFICIAL

Great – thx for the heads up

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Tracy Savage <Tracy.Savage@actleave.act.gov.au>
Sent: Friday, 13 May 2022 3:32 PM
To: Young, Michael <Michael.Young@act.gov.au>
Cc: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: Meeting With Minister

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Hi Michael

Just FYI, Anne, Liesl and myself are booked in on the 25th with the Minister.

Regards

Tracy Savage
CEO | Registrar
Long Service Leave Authority – Portable Long Service Leave Schemes

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Introduction

The ACT Government is committed to improving working conditions for all Canberrans, including supporting employees' access to portable long service leave in industries with high rates of insecure employment or employee mobility.

Long service leave enables employees to recover their energy and return to work renewed, refreshed and reinvigorated after long periods of service. There are many well-recognised benefits from supporting long service leave for employers and employees, including improved employee health and wellbeing, that in turn contribute to improved productivity.

The [Long Service Leave Portable Schemes](#) (portable schemes) in the ACT enable long service leave entitlements to be accumulated on an employee's length of service in a particular industry rather than their length of service with a single employer. The portable schemes allow for employees to transfer from employer to employer without losing the long service leave entitlements they have accrued - to 'port' their entitlements.

In the ACT workers in the building and construction, contract cleaning, community sector and security industries are covered by portable schemes.

The [ACT's economic recovery plan 2022](#) is focused on creating and protecting good local jobs. Jobs in health, education, construction, retail, renewable energy, tourism and hospitality and technical, scientific and professional services.

To further support employee access to fair and equitable employment entitlements the ACT Government has initiated a review of long service leave coverage under the *Long Service Leave (Portable Schemes) Act 2009* with a view to identifying additional occupations or industry sectors that should be provided access to portable long service leave.

We are now undertaking a consultation process to seek feedback on this proposal to expand portable schemes and inviting views from the ACT community, including employees, employers, unions, industry groups and peak bodies.

Purpose

The purpose of this consultation is:

1. To seek feedback on the proposed expansion of portable long service leave schemes to the following industries:
 - hairdressing services;
 - contract catering.

2. To invite views on other ACT occupations or industry sectors that should also have access to portable long service leave, for example:
 - personal and other services (which includes hairdressing and beauty services)
 - accommodation and food services (which includes contract catering)
 - rental, hiring and real estate services
 - administrative and support services (includes travel agency services and general administrative support services including labour hire)
 - retail trade.

Making a submission

Written submissions are invited by 17 June 2022 and should be sent by email to wsir@act.gov.au.

As part of our consideration submissions may be published, if you do not wish your submission to be published or made publicly available please mark it as confidential.

Background

How portable schemes work

Increased mobility in employment has meant that long service leave in its traditional form has become inaccessible to many workers. In 2009, the ACT Government recognised that many Canberrans were disadvantaged by service eligibility requirements to long service leave and established the portable schemes in recognition of this disadvantage. Inclusion in the portable schemes is determined by the *Long Service Leave (Portable Schemes) Act 2009* which is administered by the Long Service Leave Authority. All employees that meet the defined requirements of the portable schemes are entitled to portable long service leave and employers must register their business and their employees with the authority and keep required records of service for covered employees.

The benefits of portable schemes

Portable schemes were introduced to mitigate inequalities by allowing employees to move between employers in a covered industry without losing long service leave credits for time worked in that industry.

Workforce mobility is high with almost one in five employees employed by their current employer for less than one year.¹ This has led to a relatively low prevalence of long-term employment relationships with around three in four workers working with their employer for less than 10 years (the usual qualifying period for long service leave). This structural trend away from long-term employment is limiting access to long service leave for a large portion of the workforce.

This limitation is particularly pronounced for women. This is because traditionally women disproportionately take on caring responsibilities² and subsequently report work/life conflict significantly more than men.³ Women who have children are also more likely to take extended (unpaid) breaks from employment⁴ which hinders accumulation of long service leave benefits.

By recognising and encouraging loyalty and professional development within these industries, the schemes benefit employees by facilitating sustainable career paths. The schemes in turn benefit employers and consumers by encouraging the retention of skilled workers within the industry.

Research suggests there are a number of well-established common themes in considering the benefits and disadvantages of portable long service leave schemes. Some of these are outlined in the table below.⁵

¹ Australian Bureau of Statistics, Labour Mobility, Cat. 6209.0 (2012).

² Tanya Carney, 'The Employment Disadvantage of Mothers: Evidence for Systemic Discrimination' (2009) *Journal of Industrial Relations* 51(1), 113-130.

³ Natalie Skinner et al, *The Big Squeeze: Work, home and care in 2012* (2012); Centre for Work and Life, *Australian Work and Life Index 2012* (University of South Australia, Adelaide).

⁴ Above n 4.

⁵ The information in this table has been adapted for this purpose from source material published by the McKell Institute - https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf

Advantages of portable schemes

| | |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retention of employees | Portable schemes help to retain employees in industries with high levels of labour mobility. |
| Equity | Employees in highly casualised or contract roles otherwise have no practical access to long service leave. |
| Mobility and flexibility | Employees have more capacity to move between employers or to take short periods out of employment to meet commitments such as caring responsibilities. |
| Productivity and work environment | The capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work has advantages for boosting productivity and morale. |
| Employee attraction | A benefit for 'good employers' as employees feel less compelled to stay in poorly managed workplaces to meet long service leave eligibility requirements. |
| Non-compliance problems reduced | Employers pay for entitlements as they accrue. |
| Reduced administration | Industry funds take responsibility for administration from employees. |
| Cost certainty | Greater cost stability is provided to employers because the pay-as-you go operation limits the potential for employers to accumulate liabilities they cannot pay if they become insolvent or have trading difficulties. |
| Tax benefits | Employers can claim a tax deduction for payment of levies and the portable schemes are not required to pay tax on their investment income. |

Potential disadvantages of portable schemes

| | |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Administration costs for employers | This factor may be pronounced during transitional periods for newly established schemes. However, recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost. |
| Prefunding impact on business cash flows | Smaller employers may provide for long service leave from consolidated revenue as required. Portable schemes require employers to pay as they go. |

The Case for a National Portable Long Service Leave Scheme in Australia.⁶

This report sought views about portable long service in Australia and through representations made by employers, employees, and administrators involved in the management of established portable schemes found that generally there were positive views about portable schemes with advantages perceived to outweigh costs.

Portable Schemes in the ACT

Broadly speaking, access to long service leave in the ACT is established by either:

- the *Long Service Leave Act 1976* (LSL Act), which provides for the traditional single employer model

or

- the *Long Service Leave (Portable Schemes) Act 2009* (Portable Schemes Act), which maintains leave provisions within more mobile industries (defined industries).

The Portable Schemes Act provides long service leave for employees in defined industries who cannot access long service leave entitlements under the LSL Act as they did not remain with the same employer for a long enough period. It enables employees who choose to remain in defined industries to accrue long service leave entitlements through continuous industry service rather than through service with one employer.

In the ACT employers that have employees covered under a portable scheme must register with the ACT Long Service Leave Authority (LSL Authority) and pay a levy contribution to the authority based on the gross ordinary wages of those employees.

The LSL Authority has a number of functions in relation to portable schemes:

- identify and register employers and employees for each scheme
- maintain records of employees' service under the scheme
- provide registered employees with an annual statement about their long service leave
- maintain records of employer contributions to the scheme
- assess employees' claims for long service leave
- make long service leave payments to employees.

Further [information about the LSL Authority](#) is available on the authority website.

Contractors within defined industries have the option to make their own contributions if they wish to accrue service in a scheme and the benefit is a payment instead of leave.

⁶ https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf (2013)

When an employee decides to claim some or all of their long service leave entitlement, they lodge a claim directly with the LSL Authority and the authority (not the employer) pays the benefit. This is different to liability arrangements under the LSL Act where an employer is required to retain a contingent liability over the duration of employment for all employees, no regular levy is payable and it is up to the employer to administer and ensure funds are available.

Defined industries in the ACT

The currently four defined industries in the ACT:

- building and construction
- contract cleaning
- community sector
- security.

Information about the portable schemes for each industry is provided below.



Building and Construction

Building and construction industry employees registered on or after 1 January 1997 are entitled to **13 weeks of long service leave after ten years of recorded service** in the industry and continue to accumulate 1.3 weeks of leave for every year thereafter. The levy for the building and construction industry is currently 2.10 per cent.

Activities performed by employees in this scheme include: construction, renovation, alternation, repair and demolition of building works, roadworks and works for the storage or supply of water.



Contract Cleaning

Contract cleaning industry employees registered on or after 24 June 2000 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry and continue to accumulate 0.867 weeks of leave for every year thereafter. The levy for the contract cleaning industry is currently 1.20 per cent.

Activities performed by employees in this scheme include work that is undertaken for bringing premises into (or maintained as) a clean condition. From 1 July 2016 drivers and sorters for waste management facilities under contract with the ACT Government are also entitled to access the scheme.



Community Sector

Community sector industry employees registered on or after 1 July 2010 are entitled to **4.33 weeks of long service leave after five years of recorded service** in the industry and continue to accumulate 0.867 weeks of leave for every year thereafter. The levy for the community sector industry scheme is currently 1.20 per cent.

Activities performed by employees in this scheme include activities that are carried out under relevant laws or for the purposes of residential aged care or community aged care services. All employees within the industry are covered, for example, the chef and administration staff of a child care centre.



Security

Security industry employees registered on or after 1 January 2013 are entitled to **6.06 weeks of long service leave after seven years of recorded service** in the industry and continue to accumulate 0.867 weeks of leave for every year thereafter. The levy for the security industry scheme is currently 1.07 per cent.⁷

Activities performed by employees in this scheme include activities where work is identified by the relevant law (the *Security Industry Act 2003*) as activities performed by the security industry.

⁷ The ACT Long Service Leave Authority Governing Board appoint an actuary to investigate the state and adequacy of the money of the Authority at least once every three years. This includes whether any reduction or increase is necessary in the rates of levies paid to the Authority by employers or voluntary members.

Identifying new industries for inclusion

Our thinking and considerations

In July 2020 the ACT Legislative Assembly resolved to:

- work with Hair Stylists Australia, the ACT Hairdressing Industry, employers, employees, employee bodies and registered training organisations to determine how to include hairdressing as a portable scheme

and

- investigate extending portable schemes to other non-public sector industries.

In November 2021, the ACT Legislative Assembly called on the ACT Government to:

- expand portable schemes to the contract catering industry

and

- investigate further industries for inclusion as a portable scheme.

These actions prompted us to start thinking about improving access to long service leave entitlements to more employees in the ACT.

We have considered a range of research and material, including worker mobility data released by the Australian Bureau of Statistics, and sought to respect the objectives and principles of the Portable Schemes Act by considering:

- the transient nature of the workforce and the mobility of employees in different industries

and

- the composition and diversity profile of industries with:
 - high part-time/causal workers who typically experience lower wages
 - higher rates of short-term contracts and
 - industries with a disproportionate number of female employees.

Looking at workforce mobility

In 2020 the Australian Bureau of Statistics released a report into job mobility which indicated that 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020⁸. Our analysis shows us that mobility remained highest for professionals at

⁸ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

21.7% with technicians and trades, clerical and administrative and sales employees reporting a moderate level of mobility.⁹

Across industries, hospitality employees were identified as the most likely to change jobs in 2020, with 14.3 per cent changing their employer or business followed by employees in rental and real estate (11.4 per cent), administrative services (10.5 per cent) and retail trade (9.3 per cent). The report also showed high job mobility rates among community and personal service employees noting that almost 10 per cent had changed employers in the reporting year.

Seven years is the usual qualifying period for access to long service leave in the ACT. This tells us that many people may not stay in continuous employment with the same employer long enough to accrue long service leave entitlements.

Workforce mobility and women

High mobility industries have several things in common including:

- a higher ratio of young people who may experience particular influencing factors that affect their ability to remain with a single employer, such as family and caring responsibilities, study and professional development opportunities and the inherent transient nature of business within these industries themselves.
- a higher number of women who, across their working life may move in and out of the workforce for a number of reasons.

Women represent more than 50 per cent of employees in administrative and accommodation and food services, more than 70 per cent of employees in clerical and administration, almost 60 per cent in retail sales and more than 70 per cent in community and personal services. Less than 40 per cent are managers.¹⁰

Women under the age of 35 represent more than 55 per cent of employees in retail, accommodation and food services industries with women over 45 being almost 60 per cent of these employees. More than 60 per cent of women remain in these industries once they reach 55 years of age.

The labour force participation rate for people with children under five is 65.5 per cent for women compared with 94.4 per cent for men. It can be concluded that women are exiting the workforce to care for children, often leaving before the period of service required for long service leave. When they return to the workforce, often in the same industry, they cannot revive their previous service history.

⁹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release#job-mobility>

¹⁰ <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#data-download>

Our conclusions

We have identified five industries for which the principles and intent of portable schemes, combined with workforce mobility employment characteristics, means they should be considered for portable long service schemes:

- personal and other services (which includes hairdressing and beauty services)
- accommodation and food services (which includes contract catering)
- rental, hiring and real estate services
- administrative and support services (which includes travel agency services and general administrative support services including labour hire) and
- retail trade¹¹.

We have used the [Australian and New Zealand Standard Industrial Classification \(ANZSIC\)](#) to identify employees within these industries. ANZSIC is the standard classification system used in Australia and New Zealand to collect, compile and publish information about the operation of industries. It enables information about businesses, including employee data, to be grouped by reference to their industry and supports comparisons between industries.

The information below explains how we have used ANZIC to identify which employees in the five industries we propose be covered by a portable scheme.

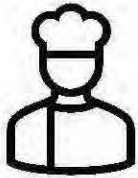
Personal and Other Services (incorporating hairdressing and beauty services)

Proposing to cover ANZIC Division 5: Personal and Other Services with some exclusions



This classification covers a breadth of activities and occupations including hairdressing and beauty services. We are proposing to exclude a broad range of personal services including religious, civic, professional and other interest group services; selected repair and maintenance activities; and private households employing staff because they do not align with the principles and intent of portable schemes or have workforce mobility considerations as outlined previously.

¹¹



Accommodation and Food Services (incorporating contract catering)

Proposing to cover all of ANZIC Division H: Accommodation and Food Services

Occupations in this division have common characteristics and perform similar functions including:

- providing short-term accommodation for visitors
- providing food and beverage preparation services and
- serving of meals and beverages for consumption by customers.

We consider it viable to cover the entire division based on the likelihood of employee mobility across occupations in the division. It is also more likely that employees in occupations in this division may cease employment with one employer due to reasons beyond their control, such as the closure of businesses, but seek to remain within the industry.

To only include Contract Catering Services would only capture a small number of businesses and employees, including a majority of small businesses that may operate alongside employees performing the same services for the same employer. This could increase the inherent disadvantage facing some employees in the food services industry who would otherwise seek to remain within the industry.



Rental, Hiring and Real Estate Services

Proposing to cover all of ANZIC Division L: Rental, Hiring And Real Estate Services

This division includes employees mainly engaged in renting, hiring, or otherwise allowing the use of tangible or intangible assets, and employees providing related services.

We consider it viable to cover the entire division because the occupations that make up the division have similar primary activities and rates of mobility across the industry.



Administrative and Support Services

Proposing to cover ANZIC Division N: Administrative and Support Services with some exclusions

This division includes employees mainly engaged in performing routine support activities for the day-to-day operations of other businesses or organisations.

The activities undertaken by employees in this division are often integral parts of activities found in all sectors of the economy. Recent trends have moved more towards the outsourcing of these activities.

Employees in this division mostly specialise in one or more of these activities and can, therefore, provide services to a variety of employers.

We are proposing to exclude building cleaning and pest control or packages services because they do not align with the principles and intent of portable schemes or have workforce mobility considerations as outlined previously.



Retail Trade

Proposing to cover ANZIC Division G: Retail Trade with some exclusions

This division includes employees mainly engaged in the purchase and/or on selling, the commission-based buying, and the commission-based selling of goods, without significant transformation, to the general public. It also includes employees that purchase and on-sell goods to the general public using non-traditional means, including the internet.

Because the majority of roles within retail trade align with the principles and intent of portable schemes and have a relatively high degree of mobility we propose minimal exclusions for non-store retailing and retail commission-based buying. Our understanding is that these employees do not experience similar mobility or vulnerability as others in this division.

From: "Sullivan, RebeccaJ" <RebeccaJ.Sullivan@act.gov.au>
Sent: 11/07/2022 5:21 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Cc: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Subject: Stakeholder presentation - for portable long service leave engagement
Attachments: Attachment A_Stakeholder Engagement Presentation_LSL Portable Schemes Expansion.PPTX, Attachment A_Stakeholder Engagement Presentation_LSL Portable Schemes Expansion.tr5

Hi Ellen

As part of the approval pack to Michael we included a draft presentation - it would be really great if you could have a look at this, so that we can amend/make additions as necessary before the first session on Thursday.

The sessions are:

Thursday 2pm start and Friday 10 am start - we are maintaining an attendee list which will be provided to you and Michael Wednesday. We will also follow up directly with any stakeholder who don't respond, or can't make it to look for possible alternatives/interest.

Very happy to take comments/discuss - whatever suits

Regards
Rebecca

-----< HPE Content Manager record Information >-----

Record Number : CM22/69463

Title : Attachment A_Stakeholder Engagement Presentation_LSL Portable Schemes Expansion

Equity in access - Long Service Leave

- The ACT Government is committed to improving working conditions for all Canberrans, including supporting workers' access to long service leave entitlements in industries with high rates of employee mobility.
- Long service leave is well established in Australia with a high degree of consensus regarding its benefits:
 - enables employees to recover their energies and return to work renewed
 - improved employee health and wellbeing
 - contributes to improved productivity.
- All workers should have the opportunity to access Long service leave – how to manage the challenges in equity of access

ACT Government Commitment

- Review mandate
 - The *Parliamentary and Governing Agreement for the 10th Legislative Assembly* provides that the Act Government will “*amend the portable long service leave schemes to ensure more workers receive fair entitlements as they move jobs in their profession*”.
 - Together with ACT Legislative Assembly motions of July 2020 and November 2021, which call on the Government to:
 - a. work with Hair Stylists Australia, the ACT hairdressing industry, employers and employees, employee bodies and registered training organisations to determine how to include the hairdressing industry in the *Long Service Leave (Portable Schemes) Act 2009* (LSL Portable Schemes); and
 - b. investigate extending the LSL Portable Schemes to other non-public sector industries
 - a. expand the LSL Portable Schemes to include the contract catering industry
 - b. investigate further industries for inclusion in the LSL Portable Schemes such as the hospitality industry.

Objective

To:

- Establish a legislative framework that supports worker access to long service leave entitlements
- Recognise equity of access on the basis of industry service - some industries are dependent upon mobility and flexibility for growth and professional advancement
- Respect and maintain the objectives of the *Long Service Leave (Portable Schemes) Act 2009*, including:
 - the transient nature of the workforce, and the mobility of employees;
 - the composition and diversity of an industry; and
 - looking at industries with:
 - high levels of part-time/casual employees, who typically receive lower wages;
 - higher rates of short term contracts; and
 - industries with a disproportionate number of female employees.
- Sustainability principles for administration of the Schemes

Proposal

Proposition:

- To take the opportunity to review the existing workability and accessibility of the existing schemes, including definitions and coverage
- To prioritise investigation of expansion to key industries :
 - hairdressing/beauty services
 - hospitality industry(includes contract catering);
 - rental and real estate industry;
 - administrative service industry;
 - retail trade Industry; and
- To consider issues arising from scheme design
- To maximise consistency across all existing and new schemes - based on workers being employed by an employer in a covered industry, and performing work in that covered industry – supported by included existing national worker classifications

Considerations/challenges in extending the portable schemes

Relevant factors for review:

- **Identifying class of workers** – alignment with established national standards or definitions (eg. the Australian and New Zealand Standard Industrial Classification, or Fair Work Australia Modern Awards);
- **promote regulatory efficiency** – minimise administrative complexity for employers, considering issues such as hybrid long service leave arrangements for parts of their workforce; and
- **consistency with objectives** – any scheme redesign should promote consistency with the objectives of the Act, as well as address existing known challenges - insecure employment, rates of inter-industry sector staff mobility and employment longevity; and

Consistency of the Expansion

Design features

Expansion of the LSL Portable Schemes to non-public sector industries such as the hairdressing and contract catering industries is a new initiative, and one that has not been introduced in any other jurisdiction. Currently, non-public sector industries in the ACT are entitled to long service leave under the *Long Service Leave Act 1976* and are unable to transfer accumulated leave if they change employers within the industry.

Existing features: coverage for

- workers who are
 - (a) employed by an employer within a covered industry; *and*
 - (b) performs work in that covered industry.

Benefits of approach: permits the LSL Portable Schemes Act to cover specific functional roles within an industry. For example, the security industry scheme applies only to workers who carry out designated 'security activities' (defined under the *Security Industry Act 2003*), rather than all workers in the industry.

Supporting Mobility

Changing landscape for employers and workers:

- 8.2 per cent (1.1 million) of employed people across Australia changed employers or businesses at least once in the 12 months to February 2020. (2020 has been used as it is most recent data not influenced by changing circumstances due to COVID-19)
- Across industries, hospitality workers were the most likely to change with 14.3% changing their employer or business;
 - followed by workers in rental and real estate 11.4%;
 - administrative services 10.5%; and
 - retail Trade 9.3%.