

South Australia

Portable Long Service Leave Regulations 2025

under the *Portable Long Service Leave Act 2024*

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1—Short title

These regulations may be cited as the *Portable Long Service Leave Regulations 2025*.

2—Commencement

These regulations come into operation on the day on which section 74 of the *Portable Long Service Leave Act 2024* comes into operation.

3—Interpretation

In these regulations—

Act means the *Portable Long Service Leave Act 2024*;

broken shift means a shift that consists of 2 or more distinct periods of work separated by a break or breaks (not including a meal break) for which the designated worker is not paid;

community service leave means leave taken for the purpose of—

- (a) attendance for jury service, including attendance for jury selection; or

- (b) assisting in a response to an emergency (however described) by a member of an organisation whose functions including responding to such emergencies;

sleepover shift means a shift of work during which a designated worker is required to stay overnight at premises other than their ordinary place of residence.

4—Allowable absence

For the purposes of the definition of *allowable absence* in section 3(1) of the Act, the following kinds of absence are prescribed:

- (a) an absence in respect of which a designated worker receives payment from their employer;

Note—

For example, paid annual leave, compassionate or bereavement leave, family and domestic violence leave, parental leave, sick leave or carer's leave (however described).

- (b) an absence as a result of taking long service leave (whether under the Act or the *Long Service Leave Act 1987*);
- (c) an absence as a result of taking community service leave;
- (d) an absence due to a work injury (within the meaning of the *Return to Work Act 2014*) in respect of which a designated worker is entitled to weekly payments under that Act.

5—Corresponding law

For the purposes of the definition of *corresponding law* in section 3(1) of the Act, the following laws are prescribed:

- (a) the *Long Service Leave (Portable Schemes) Act 2009* of the Australian Capital Territory;
- (b) the *Community Services Sector (Portable Long Service Leave) Act 2024* of New South Wales;
- (c) the *Portable Long Service Leave (Community Services Sector) Act 2024* of the Northern Territory;
- (d) the *Community Services Industry (Portable Long Service Leave) Act 2020* of Queensland;
- (e) the *Long Service Benefits Portability Act 2018* of Victoria.

6—Meaning of work

For the purposes of section 3(3) of the Act, the prescribed number of consecutive hours is 2.

7—Ordinary weekly pay

Pursuant to section 3(4)(c) of the Act—

- (a) the following payments made to, or for the benefit of, a designated worker must be included for the purposes of a determination or calculation under section 3(4):

- (i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);
 - (ii) any payment related to sick leave or carer's leave;
 - (iii) any payment related to community service leave made to, or for the benefit of, the designated worker by their employer;
 - (iv) any payment related to parental leave made to, or for the benefit of, the designated worker by their employer;
 - (v) any payment related to compassionate or bereavement leave;
 - (vi) any payment in the nature of a casual loading;
 - (vii) any payment in the nature of penalty rates or a shift work allowance for any of the following:
 - (A) work performed on a weekend, a public holiday or a part-day public holiday;
 - (B) work performed late at night or early in the morning;
 - (C) work performed on a broken shift;
 - (D) a sleepover shift or work performed on a sleepover shift;
 - (viii) any payment related to a day off work for a public holiday;
 - (ix) any payment related to a rostered day off work;
 - (x) any payment related to salary packaging or salary sacrifice;
 - (xi) any weekly payments paid in respect of a work injury under the *Return to Work Act 2014*;
 - (xii) any payment in the nature of a first aid allowance;
 - (xiii) any payment related to a stand down;
 - (xiv) any other payment made to, or for the benefit of, a designated worker, other than a payment of a kind referred to in paragraph (b); and
- (b) the following payments made to, or for the benefit of, a designated worker must be excluded for the purposes of a determination or calculation under section 3(4) of the Act:
- (i) any payment in the nature of an annual leave loading;
 - (ii) any payment related to parental leave, other than a payment the designated worker receives from their employer;
 - (iii) any payment in respect of superannuation, other than a payment related to salary packaging or salary sacrifice;
 - (iv) any payment in the nature of a reimbursement;
 - (v) any payment in respect of overtime;
 - (vi) any payment in the nature of a bonus;
 - (vii) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back pay;

- (viii) any payment in respect of fares or in the nature of a vehicle or travelling allowance;
- (ix) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

8—Application for registration as registered employer

For the purposes of section 25(3)(c) of the Act, the prescribed period within which an employer must apply for registration on the register of employers for a designated sector is 28 days after the employer becomes an employer within the designated sector.

9—Notification of refusal to cancel registration

For the purposes of section 29(4) of the Act, if an industry board refuses to grant an application for cancellation of an employer's registration, the board must give the employer written notice of its decision (setting out the reasons for the decision) within 14 days after the decision is made.

10—Register of employers

For the purposes of section 33(3) of the Act, a register of employers must be kept available for inspection during ordinary office hours at the principal office of the relevant industry board, and the register, or extracts of the register, may be made available by electronic means.

11—Recovery of amount paid for leave allowed before entitlement accrues

For the purposes of section 38(5) of the Act, if—

- (a) an industry board for a designated sector makes a payment to a person under section 38(4) of the Act in accordance with an agreement entered into under that section, other than an enterprise agreement referred to in section 37(9) of the Act; and
- (b) the person ceases to work as a designated worker in the relevant designated sector for a continuous period of 12 months or more,

the board may recover from the person an amount equal to the amount paid by the board to the person under section 38(4) of the Act.

12—Notification of rejection—cessation of employment

For the purposes of section 39(2) of the Act, if an industry board rejects an application by a person for payment of an amount in connection with a designated worker ceasing work in a designated sector, the board must give the applicant written notice of its decision (setting out the reasons for the decision) within 14 days after the decision is made.

13—Meaning of remuneration

Pursuant to section 48(5) of the Act—

- (a) the following payments made to, or for the benefit of, a designated worker will be taken as constituting remuneration for the purposes of section 48:

- (i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);
 - (ii) any payment related to sick leave or carer's leave;
 - (iii) any payment related to community service leave made to, or for the benefit of, the designated worker by their employer;
 - (iv) any payment related to parental leave made to, or for the benefit of, the designated worker by their employer;
 - (v) any payment related to bereavement leave;
 - (vi) any payment in the nature of a casual loading;
 - (vii) any payment in the nature of penalty rates or a shift work allowance for any of the following:
 - (A) work performed on a weekend, a public holiday or a part-day public holiday;
 - (B) work performed late at night or early in the morning;
 - (C) work performed on a broken shift;
 - (D) a sleepover shift or work performed on a sleepover shift;
 - (viii) any payment related to a day off work for a public holiday;
 - (ix) any payment related to a rostered day off work;
 - (x) any payment related to salary packaging or salary sacrifice;
 - (xi) any weekly payments paid in respect of a work injury under the *Return to Work Act 2014*;
 - (xii) any payment in the nature of a first aid allowance;
 - (xiii) any payment related to a stand down;
 - (xiv) any other payment made to, or for the benefit of, a designated worker, other than a payment of a kind referred to in paragraph (b); and
- (b) the following payments made to, or for the benefit, of a designated worker will not be taken as constituting remuneration for the purposes of section 48 of the Act:
- (i) any payment in the nature of an annual leave loading;
 - (ii) any payment related to parental leave, other than a payment made by the designated worker's employer;
 - (iii) any payment in respect of superannuation, other than a payment related to salary packaging or salary sacrifice;
 - (iv) any payment in the nature of a reimbursement;
 - (v) any payment in respect of overtime;
 - (vi) any payment in the nature of a bonus;
 - (vii) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back pay;

- (viii) any payment in respect of fares or in the nature of a vehicle or travelling allowance;
- (ix) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

14—Penalty for late payment

- (1) For the purposes of section 51(1)(a) of the Act, the prescribed rate of penalty interest is 20% per annum.
- (2) For the purposes of section 51(1)(b) of the Act, the prescribed amount is \$75.

15—Refund of overpayments

For the purposes of section 53(1) of the Act, the period of 21 days after the board becomes aware of the overpayment is prescribed.

16—Self-employed contractors and working directors

- (1) For the purposes of section 57(6)(b) of the Act, the following periods in respect of each financial year are prescribed:
 - (a) 1 January to 31 March;
 - (b) 1 April to 30 June;
 - (c) 1 July to 30 September;
 - (d) 1 October to 31 December.
- (2) For the purposes of section 57(6)(c)(i) of the Act, the prescribed number of months of effective service entitlement to be credited by the board to the registered person in respect of each period prescribed under subregulation (1) for which the registered person has made a payment under section 57 of the Act is 3 months.
- (3) For the purposes of section 57(13)(c) of the Act, the period of 3 years is prescribed.

17—Notification of refusal—salary sacrifice arrangements

For the purposes of section 58(5) of the Act, if an industry board refuses to grant an application by a registered employer for payment of an amount that would otherwise be payable to a designated worker on account of an entitlement to, or a payment in respect of, long service leave, in connection with a salary sacrifice arrangement between the employer and the designated worker, the board must give the employer written notice of its decision (setting out the reasons for the decision) within 14 days after the decision is made.

18—Prescribed period—salary sacrifice arrangements

For the purposes of section 58(8) of the Act, the prescribed period is 21 days after the payment to the worker is made.

19—Transitional provisions—employers

- (1) For the purposes of clause 7(2)(c)(ii) of Schedule 3 of the Act, the amount payable to the designated worker is to be calculated by multiplying the designated worker's ordinary weekly pay (determined in accordance with the *Long Service Leave Act 1987*) by the period of long service leave taken, or in respect of which payment is to be received, by the designated worker.
- (2) Subject to subregulation (3), for the purposes of clause 7(3)(a) of Schedule 3 of the Act, the amount an employer is liable to pay to the Board is to be calculated as follows:

$$A = \frac{OWRP \times M \times 1.3}{12}$$

where—

A is the amount payable

OWRP is the person's ordinary weekly rate of pay, determined in accordance with the *Long Service Leave Act 1987*

M is the person's period of continuous service accrued under the *Long Service Leave Act 1987*, calculated immediately before the designated day (expressed in months).

- (3) In the case where a person—
 - (a) became a designated worker on the designated day; and
 - (b) after the designated day, became entitled to long service leave, or a payment in respect of long service leave, under the Act; and
 - (c) changes employer before taking the accrued long service leave, or receiving a payment in respect of the long service leave,

the person's ordinary weekly pay is to be determined as at the date on which the person ceased to be an employee of the original employer.

- (4) For the purposes of clause 7(3)(c) of Schedule 3 of the Act, the amount payable to the designated worker is an amount equal to the amount paid, or liable to be paid, to the Board by the employer under subclause (2) of this Schedule.
- (5) For the purposes of clause 7(7)(c) of Schedule 3 of the Act, an agreement must be provided by the employer to the Board in the manner and form approved by the Board.
- (6) Pursuant to clause 7(8) of Schedule 3 of the Act, if an employer and an employee enter an agreement under clause 7(6) of that Schedule, the employer must, within 28 days after the payment is made pursuant to the agreement, in the approved form, provide the Board with evidence of the payment.

20—Transitional provisions—modification of Schedule 3 clause 7(7)

- (1) Pursuant to clause 7(8) of Schedule 3 of the Act, an agreement under clause 7(6) of Schedule 3 of the Act may be entered into at any time after the designated day.
- (2) To avoid doubt, subregulation (1) operates in place of clause 7(7)(a) of Schedule 3 of the Act.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council

on

No of 2025