



Government
of South Australia

SafeWork SA

Draft *Portable Long Service Leave Regulations 2025*

May 2025

This paper provides an overview of the draft *Portable Long Service Leave Regulations 2025*. The draft regulations have been prepared in close consultation with the Community Services Sector Long Service Leave Board (the Board).

3. Interpretation

This regulation defines terms used in the regulations.

4. Allowable absence

Under the *Portable Long Service Leave Act 2024* (the Act), a person will be credited with 3 months of effective service as a designated worker if they have worked as a designated worker in the relevant designated sector for one or more days in a return period, or if they have 1 or more days of allowable absence from work in the relevant designated sector in a return period.

The Act defines an allowable absence to be a kind prescribed by regulation.

This regulation sets out the kinds of absence from work that will be counted as an allowable absence.

5. Corresponding law

The Act provides that ***corresponding law*** means a law of another State, or of a Territory or the Commonwealth, prescribed by the regulations to be a corresponding law.

Prescribing corresponding laws in the Regulations will allow reciprocal arrangements to be made with other States and Territories that have portable long service leave schemes for the community services sector, allowing workers to have service under those schemes to have that service recognised for the purpose of the South Australian scheme and vice versa.

This regulation prescribes the relevant corresponding law governing portable long service leave for the community services sector in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, and Victoria.

6. Meaning of work

The Act provides that a person will be taken to have worked for a day if the person spends at least the prescribed number of consecutive hours engaged in employment to which this Act applies during any 24-hour period.

This regulation provides that a person will be taken to have worked for a day if the person spends at least 2 consecutive hours engaged in employment to which the Act applies during any 24-hour period.

A reference to being engaged in employment is a reference to employment in the community services sector as defined in the Act.

This means that a person who works one 2 hours shift per quarter would reach entitlement at the same time as someone who works a full time 40 hour week however the payment each worker receives in relation to their period of long service leave will be reflective of those hours worked, being an average of the persons weekly earnings over the previous 3-year period.

7. Ordinary weekly pay

A person's ordinary weekly pay is used to calculate their long service leave payment.

The Act provides that the regulations may specify payments made to, or for the benefit of a worker that is to be included or excluded for the purpose of calculating ordinary weekly pay.

This regulation has been drafted to stipulate which payments made to, or for the benefit of a worker, are included and which are excluded for the purpose of calculating a person's ordinary weekly pay.

These payments mirror those prescribed for the meaning of remuneration, which is used to calculate the levy payable by an employer (at regulation 13).

8. Application for registration as registered employer

The Act provides that an employer in the community services sector must apply for registration on the register of employers for the community services sector within a period to be prescribed in the regulations.

This regulation prescribes that period to be 28 days after the employer becomes an employer within the community services sector.

Pursuant to section 7 of the Act, an employer may apply to the Community Sector Board to extend the time for the employer to register in the scheme – for example, to allow the employer to align their transition into the scheme with the commencement of a new funding agreement that takes the payment of the levy into account. **An application to extend the time for an employer to register is a matter for the Board to determine.**

Until the employer is registered, the Act will not apply to a person's employment with that employer, meaning those employees will remain covered under the *Long Service Leave Act 1987* until they transition into the new scheme.

9. Notification of refusal to cancel registration

The Act provides that registered employer may, by notice in the approved form, apply to the Board for the cancellation of the employer's registration if the registered employer stops employing workers in the community services sector. If the Board refuses to grant the application the Board must provide the employer written notice of its decision in accordance with the regulations.

This regulation has been drafted to provide that if the Board refuses to grant an application for cancellation of an employer's registration, the Board must give the employer written notice of that decision setting out the reasons for the decision within 14 days after that decision is made.

10. Register of employers

The Act provides that the Board will keep a register of employers registered in the scheme in such a form as the Board sees fit, including in electronic format. This register must be kept available for inspection, without fee, in accordance with the regulations.

This regulation has been drafted to provide that the register of employers must be kept available for inspection during ordinary office hours at the principal office of the Board, and that extracts can be made available by electronic means.

Whilst the Act provides that a copy of an entry on the register of employers may be obtained on payment of the prescribed fee, a fee will not be prescribed at this time. A copy will therefore be able to be obtained at no cost.

11. Reg for 38(5) – Recovery of amount

Section 38 of the Act provides that an employer and a worker may agree on the worker taking long service leave in anticipation of the entitlement accruing to the worker under the Act if an enterprise agreement expressly provides for such an agreement. Such an agreement must be in writing and signed by the employer and the person.

If such an agreement is entered into, the Board must pay the person the amount that would be payable if that entitlement had accrued. However, if a person takes long service leave under this section and receives a payment from the Board; and the person then ceases to work as a designated worker in the community services sector before that entitlement does accrue for a continuous period of 12 months or more the Board may recover from that person an amount determined under the regulations.

This regulation has been drafted to provide that the Board may recover an amount equal to the amount paid by the Board to the person under section 38(4) of the Act.

Note that this does not apply in circumstances where an enterprise agreement provides a defined entitlement to long service leave in respect of a shorter period. For example, if an enterprise agreement provides that a worker is entitled to long service leave after 5 years continuous service - that is an entitlement – in such cases the Board cannot recover a payment made if the person takes long service leave following five years continuous service and then leaves the sector after six years.

12. Notification of rejection – cessation of employment

The Act provides that an application can be made to the Board for the payment of an amount for pro rata leave if a designated worker has attained an effective service entitlement of at least 84 months (7 years) in circumstances where that person has died, has ceased to work as a designated worker in the relevant designated sector because of a physical or mental disability that will prevent the person from working as a designated worker in the sector for a continuous period of 12 months or more, or has ceased to work in the sector and will not be working in the sector for 12 months or more. The Board can however determine to reject such an application.

This regulation provides that if the Board rejects such an application 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

The Act provides that each employer in the community services sector is required to pay a levy to the Board. The levy will be a percentage of the total remuneration paid to each of the employer's designated workers in the sector during the period to which the levy relates.

The Act provides that the regulations can specify payments made to, or for the benefit of a worker that will, or will not, be taken as constituting remuneration.

This regulation has been drafted to stipulate which payments to a worker will be included and excluded when determining a workers remuneration for the purpose of calculating the levy payment.

These payments mirror those prescribed for calculating ordinary weekly pay (at regulation 7).

14. Penalty for late payment

The Act provides that if an employer fails to provide a return or pay a levy as and when required under the Act then the amount of any levy in arrears will be increase by penalty interest at an amount prescribed in the regulations and the Board may impose a fine on the employer of an amount not exceeding an amount prescribed by the regulations.

This regulation prescribes a penalty interest of 20% per annum; and a maximum fine amount of \$75.

15. Refund of overpayments

The Act provides that if a levy is overpaid the Board must refund the amount overpaid within the period prescribed by the regulations.

This regulation prescribes that the Board must refund 21 days after the board becomes aware of the overpayment.

16. Self-employed contractors and working directors

Section 57 of the Act allows the Board to establish an investment scheme that will allow a self-employed contractors and working directors in the community services sector to voluntarily apply to participate in the investment scheme which will allow those people who work for themselves to have a paid break once they have accrued 120 months (10 years) effective service entitlement in the scheme.

This regulation:

- sets out the contribution periods that people registered under the investment scheme will be required to pay the required contribution;
- provides that the registered person will be credited with 3 months effective service for each contribution period for which the person makes a payment; and
- prescribes a period of 3 years for the purpose of section 57(13) of the Act which relates to the preservation of the person's effective entitlement under the scheme.

17. Notification of refusal – salary sacrifice arrangements

The Act enables a registered employer to apply to the Board to be paid an amount that would otherwise be payable by the Board in relation to long service leave so that the amount can be applied for the benefit of a designated worker under a salary sacrifice arrangement.

The Board must consider such an application and has the power to grant or refuse the application. If the Board does refuse, the Board must give the employer written notice of its decision in accordance with the regulations.

This regulation provides that if the Board refuses to grant an application, 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

The Act enables a registered employer to apply to the Board to be paid an amount that would otherwise be payable by the Board in relation to long service leave so that the amount can be applied for the benefit of a designated worker under a salary sacrifice arrangement.

The Board must consider such an application and has the power to grant or refuse the application. If the Board approves the application, the employer must:

- provide the Board with confirming an amount received has been paid to, or for the benefit of, a worker; or
- if the employer does not pay all of an amount received to, or for the benefit of, the designated worker—pay to the industry board the amount unpaid,

This regulation provides that the prescribed period is 21 days after the payment to the worker is made.

19. Transitional provisions—employers

The Act provides that a workers existing long service leave entitlements are preserved under the *Long Service Leave Act 1987* (i.e. if a worker has reached the required period of service with the one employer prior to the scheme commencing, they can still take their long service leave after the scheme comes into effect).

An employee's period of continuous service in respect of work with their employer prior to commencement of the new scheme is credited as effective service under the Act. For example, an employee who has been working for their employer for five years will have that period of service credited to the new scheme (with the service credited in months, for instance, 5 years service would be credited as 60 months effective service in the new scheme).

However, if the employee changes employer after the scheme comes into effect and before the person accrues 7 years continuous service with the employer (whether pre-scheme or a combination of pre- and post-scheme) then the effective service under the Long Service Leave Act 1987 is no longer preserved and will no longer count as effective service.

Employers remain responsible for any portion of long service leave accrued by a worker in their employ immediately prior to and upon commencement of the scheme. These employers will need to maintain their existing long service leave provisioning in relation these workers to ensure that they have sufficient funds on hand to meet these obligations.

The transitional provisions of the Act, together with the transitional provisions in the Regulations set out how the employers pre-scheme liability is to be calculated and paid.

19(1) – employees with an existing entitlement to long service leave upon commencement:

Schedule 3 clause 7(2) of the Act applies in circumstances where an employer has an employee who has accrued an entitlement to long service leave under the *Long Service Leave Act 1987* upon commencement of the scheme.

In these circumstances:

- The employer is liable to pay to the Board an amount equal to the amount that would be payable by the employer if the employee's accrued entitlement under the *Long Service Leave Act 1987* had been paid immediately before the designated day. This caps the amount payable by the employer, for example, the amount will not increase over time even if the employee moves to a higher paying role with that employer or receives a pay increase prior to taking their entitlement accrued under the *Long Service Leave Act 1987*.
- This amount becomes payable by the employer when the employee takes a period of long service leave (or receives a payment in respect of long service leave) on or after the designated day, where that leave relates to the long service leave accrued by that person under the *Long Service Leave Act 1987*.

Regulation 19(1) has been drafted for the purpose of clause 7(2)(c)(ii) of Schedule 3 of the Act to provide that the amount payable to the employee is to be calculated by multiplying the person'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 (this should be equal to the amount payable by the employer to the Board).

19(2), (3) and (4) – employees who accrue an entitlement to long service leave based on continuous service with one employer prior to and after the commencement:

Schedule 3 clause 7(3) of the Act applies in circumstances where an employer has an employee who does not have an entitlement to long service leave under the *Long Service Leave Act 1987* upon commencement of the scheme; and the employee becomes entitled to long service leave under the Act having accrued 7 years of continuous service with the employer.

In these circumstances:

- **Regulation 19(2)** provides that the employer is liable to pay to the Board an amount in respect of the employee's service prior to commencement of the scheme, calculated in accordance with the *Long Service Leave Act 1987*. This amount is payable by the employer when the employee takes long service leave.
- **Regulation 19(3)** has been drafted to provide that where the employee became entitled to long service leave under the Act, and has changed employer before taking the long service leave accrued with the original employer, the person's ordinary weekly pay is to be determined as at the date the person ceased to be an employee of the original employer. This caps the amount payable by the employer at the rate the person was earning when they ceased to work for that employer and ensures the employer can determine the liability as at the date the person ceases working for them.
- **Regulation 19(4)** provides that the amount payable to the employee is equal to the amount paid (or liable to be paid) to the Board under regulation 19(2).

Agreement to extinguish an employer's liability under the *Long Service Leave Act 1987*:

Schedule 3 clause 7(6) of the Act allows an employee and employer to agree to the employer paying the employee an amount in respect of the employee's long service leave entitlement accrued under the *Long Service Leave Act 1987* prior to the scheme commencing.

Such an agreement:

- can be entered into any time after scheme commencement (refer to regulation 20 below);
- must be agreed in writing and signed by the employer and the employee; and
- must be provided to the Board to evidence the liability has been extinguished (allowing the Board to remove any pre-scheme effective service entitlement that was credited upon the scheme commencing).

Regulation 19(5) and (6) have been drafted to provide that an agreement to extinguish an employer's liability to provide long service leave to an employee under the *Long Service Leave Act 1987*:

- must be provided by the employer to the Board in the manner and form approved by the Board (further information in relation to this will be made available by the Board in due course prior to scheme commencement); and
- the employer must provide the Board with evidence of the payment made to the employee within 28 days after the payment is made pursuant to the agreement.

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

The Act provides that where an employer and employee agree to the employer making a payment to the employee to extinguish a liability under the *Long Service Leave Act 1987*, this agreement must be entered into within 3 months of the new scheme commencing.

This regulation has been drafted to modify the 3 month timeframe, to enable such an agreement to be entered into at any time after the scheme commences, providing greater flexibility.

How can I provide feedback?

SafeWork SA are seeking feedback in relation to the draft Portable Long Service Leave Regulations 2025.

Submissions can be emailed to SWSAPolicy@sa.gov.au.

The closing date for submissions is Friday, 23 May 2025.

Please be aware that any submissions or feedback provided will be subject to the *Freedom of Information Act 1991*. While efforts will be made to keep material confidential where this is requested, in some circumstances submissions be required to be disclosed under that Act. Where disclosure of information may identify you, attempts will be made to consult with you before any documents are disclosed.