



**Legislative Assembly for the
Australian Capital Territory**

Standing Committee on Economy and
Gender and Economic Equality

Inquiry into Long Service Leave (Portable Schemes) Amendment Bill 2022

Legislative Assembly for the Australian Capital Territory
Standing Committee on Economy and Gender and Economic Equality

Approved for publication

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Economy and Gender and Economic Equality on 2 December 2020.

The Committee is responsible for the following areas:

- Chief Minister’s Responsibilities
- Economic development and diversification
- Tourism
- Industrial relations and workplace safety
- Social impacts and outcomes of economic policies including gender considerations (excluding Office for Women)
- Minister of State responsibilities (excluding Justice and Community Safety Directorate reporting areas)
- Business and better regulation
- Arts

You can read the full establishing resolution [on our website](#).

Committee members

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About this inquiry

The Long Service Leave (Portable Schemes) Amendment Bill 2022 was presented in the Assembly on 22 November 2022. It was then referred to the Standing Committee on Economy and Gender and Economic Equality as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months of their presentation.

The committee decided to inquire into the bill on 8 December 2022.

Terms of Reference

At its meeting on 2 December 2020 (amended 4 August 2022), the Legislative Assembly resolved that:

‘all bills presented to the Assembly stand referred to the relevant standing committee for inquiry and report within two months from the presentation of the bill, except for those bills introduced in the last sitting week of the calendar year where the committee shall report in two months. Within 21 days of the presentation of the bill in the Assembly, the committee must decide whether or not to undertake an inquiry, and shall inform the Speaker of its decision, the Speaker must then arrange for all members to be notified. In the event that the subject matter of the bill makes it unclear which committee it should be referred to, the Speaker will determine the appropriate committee.’

The [Long Service Leave \(Portable Schemes\) Amendment Bill 2022](#) was presented in the Assembly on 22 November 2022, and referred to the Standing Committee on Economy and Gender and Economic Equality on 23 November 2022. The Committee resolved to undertake an inquiry into the Bill and to report back by 23 January 2023.

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Acronyms

Acronym	Long form
ACT	Australian Capital Territory

Recommendations

Recommendation 1

The Committee recommends that the ACT Legislative Assembly pass the Long Service Leave (Portable Schemes) Amendment Bill 2022.

Recommendation 2

The Committee recommends that the ACT Government consider and address the specific issues brought up in the submissions to this inquiry.

Recommendation 3

The Committee recommends that the ACT Government work with industry and stakeholders in implementation of the expansion of the Long Service Leave Portable Schemes.

1. Introduction

Conduct of the Inquiry

- 1.1. Due to the short timeframe of this inquiry over the Christmas holiday period, the Committee resolved to hold the inquiry on the papers, and to extend the deadline of submissions for as long as possible (until 19 January 2023).
- 1.2. The Committee received a total of ten submissions in the inquiry (Appendix A).

Legislative History

The history of long service leave (LSL) is important in understanding the ideological viewpoints driving debate about its future.¹

- 1.3. Long service leave is unique to Australia and New Zealand and has its origins in the countries' geographical location and colonial pasts.²
- 1.4. It was first offered to senior Victorian public servants in the mid-1800s as extended paid leave in recognition of long periods of continuous service.³ The *Civil Service Act of Victoria 1862* set out as follows:

Furlough for Europe—Where any officer desires to visit Europe or some other distant country if he have continued in the civil service of this colony at least ten years and have not been reduced for misconduct or deprived of leave of absence under this Act the Governor in council may grant to him leave of absence upon half-salary for a period not exceeding twelve months but for such period of absence such officer shall not be entitled to receive any annual increment.⁴

- 1.5. In the 1940s, long service leave was extended to the private sector. It allowed employees a period of rest at a time of greater recognition of the importance of leisure time and incentivised them to remain loyal to one employer.⁵
- 1.6. Two key features of long service leave as it was initially conceived were:
 - to reward employees with a period of rest and recuperation, as opposed to monetary compensation; and
 - to prevent staff turnover.

¹ The Senate Education and Employment References Committee, *Feasibility of, and options for, creation a national long service standard, and the portability of long service and other entitlements*, February 2016, p 5.

² The Senate Education and Employment References Committee, *Feasibility of, and options for, creation a national long service standard, and the portability of long service and other entitlements*, February 2016, p 3.

³ Victorian Government, *Long service leave in Australia*, 28 October 2019, <https://www.vic.gov.au/portable-long-service-authority-annual-report-2018-19/long-service-leave-australia> (accessed 17 January 2023).

⁴ The Sydney Morning Herald, *The Civil Service Act of Victoria 1862*, 30 July 1862, <https://trove.nla.gov.au/newspaper/article/13232023> (accessed 17 January 2023).

⁵ Ai Group, *Portable Long Service Leave Expansion: a proposal to establish long new service leave schemes in the ACT*, 21 July 2022, p 5.

- 1.7. Traditional long service leave is legislated in the ACT under the *Long Service Leave Act 1976*.
- 1.8. Portable long service leave schemes were created for employees in industries which are typified by short-term employment. For example, the work in the construction industry is project based, and workers move between employers as one build finishes and another begins. Portable schemes allow workers to accumulate and access long service leave after a period of continuous service in one industry rather than with one employer.⁶ There has been some argument that portable leave schemes ‘makes the focus an employee’s entitlement to a lump sum payment, rather than an employee’s entitlement to a period of rest.’⁷
- 1.9. Portable long service leave schemes are administered by public authorities and can be legislated under Federal, State, or Territory law. This presents complexities in administration of the schemes due to the inconsistencies between industries and locations. In 2016 the Senate’s Education and Employment References Committee recommended that the feasibility of a national portable schemes governing body be investigated. To date, no national governing body has been established.⁸
- 1.10. In the ACT, the *Long Service Leave (Portable Schemes) Bill 2009* established the ACT Long Service Leave Authority (the Authority), which incorporated two other bodies which had been administering portable leave schemes for the construction and contract cleaning industries.⁹
- 1.11. The Authority is responsible for the following:
- identifying and registering employers and employees;
 - ensuring employers provide quarterly returns and levy payments;
 - maintaining records of workers service and employers contributions/payments to the scheme;
 - identifying the liabilities of the scheme through annual and triennial actuarial reports;
 - investing surplus funds to cover administration costs and current and future liabilities;
 - assessing workers’ claims and making payments as required; and
 - reporting to the ACT Government and Legislative Assembly in accordance with legislative requirements.¹⁰
- 1.12. As of January 2023, the ACT’s Portable Long Service Leave Scheme (the Scheme) covers the construction and building, contract cleaning, community sector, and security industries.

⁶ The Education and Employment References Committee, *Feasibility of, and options for, creation a national long service standard*, p 2.

⁷ Council of Small Business Organisations Australia, Submission 10, p 1.

⁸ The Education and Employment References Committee, *Feasibility of, and options for, creation a national long service standard*.

⁹ Minister for Industrial Relations and Workplace Safety, *Long Service Leave (Portable Schemes) Amendment Bill 2022; Explanatory Statement and Human Rights Compatibility Statement*, p 1.

¹⁰ ACT Leave, *About Us*, <https://actleave.act.gov.au/about-us/> (accessed 17 January 2023).

2. The Bill

- 2.1. The ACT Labor and ACT Greens governing agreement for the Tenth Assembly agreed to ‘amend the Portable Long Service Scheme to ensure more workers receive fair entitlements as they move jobs in their profession’.¹¹
- 2.2. In July 2022, the ACT Government released on consultation paper on proposed expansion of the Scheme to the hairdressing and contract catering industries, and possible further expansion to industries such as real estate and accommodation.¹² The Government received written feedback and conducted engagement sessions, and released a paper on the outcomes of the consultation in October 2022.¹³
- 2.3. The Long Service Leave (Portable Schemes) Amendment Bill 2022 (the Bill) was presented to the Legislative Assembly on 22 November. If enacted, it would extend the Scheme to the hairdressing, beauty, accommodation, and food services.¹⁴ As stated in the explanatory statement to the Bill:

The types of work covered under the hairdressing and beauty services industry include:

- barbers, beauty services, electrolysis services, hairdressing services, make-up services, nail care and skin care services and tanning services.

The types of work covered under the accommodation and food services industry include:

- accommodation services covering camping ground operation, caravan park operation, holiday house/flat operation, hotel/motel/resort operation, serviced apartments, youth hostel operation, and
- food services covering cafes, restaurants and takeaway food services, pubs, taverns and bars and clubs.¹⁵

- 2.4. Feedback on the proposed expansion of the Scheme has been mixed, with employee representatives generally supportive, and representatives from industries and employers, especially in the hairdressing industry, firmly opposed to it.¹⁶

¹¹ ACT Labor and ACT Greens, *Parliamentary & Governing Agreement*, Appendix 2, p 13.

¹² ACT Government, *Portable Long Service Leave Expansion: Consultation Paper: A proposal to establish new portable long service leave schemes in the ACT*.

¹³ ACT Government, *Expansion of portable long service leave in the ACT: Outcomes of public consultation*.

¹⁴ *Long Service Leave (Portable Schemes) Amendment Bill 2022*; *Explanatory Statement and Human Rights Compatibility Statement*, p 1.

¹⁵ *Long Service Leave (Portable Schemes) Amendment Bill 2022*; *Explanatory Statement and Human Rights Compatibility Statement*, p 2.

¹⁶ *Long Service Leave (Portable Schemes) Amendment Bill 2022*; *Explanatory Statement and Human Rights Compatibility Statement*, p 2.

Advantages

Employee wellbeing

- 2.5. Long service leave is believed to boost the health and well-being of employees, and to bring additional benefits to employers in the form of increased employee morale and productivity.¹⁷
- 2.6. Extending the Scheme would bring 'improved and consistent access to long service leave, particularly in industries such as personal care where there is longer-term occupational tenure and higher mobility between employees.'¹⁸
- 2.7. Furthermore, according to the ACT Government, portable leave schemes incentivise "good employers' as employees feel less compelled to stay in poorly managed workplaces to meet long service leave eligibility requirements.'¹⁹

Equity

- 2.8. The ACT Government noted in the explanatory statement to the Bill that:

Increased mobility in employment has meant that long service leave in its traditional form has become inaccessible to many workers.²⁰
- 2.9. The ACT is recorded as having the highest rate of job mobility in the nation at 12.8 percent.²¹ In the Australian workforce as a whole, around three quarters of workers have been with their employers for less than ten years, which is the usual qualifying period required to access long service leave.²²
- 2.10. Insecure work is commonly defined as work which 'does not offer reliability to a worker in areas such as hours, pay and conditions.' Involuntary job mobility, whether due to short term contracts or casual or irregular hours, contributes to work insecurity and exacerbates the lack of access a worker will have to long service leave.²³
- 2.11. Research indicates that women are more likely to be affected by insecure work. They also are more likely to take extended breaks from the workplace in order to take on caring roles such as child-raising, and report more work/life balance conflicts than men.²⁴ These factors disproportionately impact women's access to long service leave.²⁵

¹⁷ ACT Government, *Portable Long Service Leave Expansion: Consultation Paper*, p 5. ACTCOSS, *Submission 2*, p 1.

¹⁸ ACT Government, *Expansion of portable long service leave in the ACT: Outcomes of public consultation*, p 2.

¹⁹ ACT Government, *Portable Long Service Leave Expansion: Consultation Paper*, p 5.

²⁰ *Long Service Leave (Portable Schemes) Amendment Bill 2022; Explanatory Statement and Human Rights Compatibility Statement*, p 3.

²¹ *Long Service Leave (Portable Schemes) Amendment Bill 2022; Explanatory Statement and Human Rights Compatibility Statement*, p 3-4.

²² ACT Government, *Portable Long Service Leave Expansion: Consultation Paper*, p 4.

²³ The Education and Employment References Committee, *Feasibility of, and options for, creation a national long service standard*, p 26.

²⁴ Minister Gentleman, *Submission 7*, p 3.

²⁵ ACT Government, *Portable Long Service Leave Expansion: Consultation Paper*, p 4.

- 2.12. Increasing the availability of portable long service leave to women and insecure workers is one of the main arguments in support of the expansion of the Scheme.

Employee attraction and retention

- 2.13. Portable long service leave schemes can discourage workers from switching careers, and supports the retention of skilled and experienced workers within their industry.²⁶

Other benefits

- 2.14. The ACT Government's consultation paper lists the following further benefits of expanding the current Scheme:
- 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; and
 - 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.²⁷

Disadvantages

Staff turnover

- 2.15. As discussed earlier in the report, the main purpose of long service leave as it was initially conceived was to encourage and reward loyalty to one employer. If extended, the Portable Long Service Leave Scheme will remove this incentive.
- 2.16. Staff attraction and retention is especially difficult for small businesses, as Ms Mahar, owner of a Canberra hairdressing salon, wrote in her submission to the Committee:

Small businesses who employ and train hairdressers need the partnership of working with long term members in *one* business continuously. This is required to sustain healthy businesses that train apprentices and have longevity. This move [to a portable long service leave scheme] would completely undermine that relationship.

[...]

Every time I lose a senior hairdresser or have a change in team member the cost to my business is massive. This is why the incentive of Long Service Leave is something I have always been grateful to refer to as an incentive to stay in our workplace long term.²⁸

²⁶ ACT Government, *Portable Long Service Leave Expansion: Consultation Paper*, p 5

²⁷ ACT Government, *Portable Long Service Leave Expansion: Consultation Paper*, p 5.

²⁸ Ms Emmalene Maher, Managing Director, Eden Hair, *Submission 1*, p 2.

- 2.17. Several stakeholders from the hairdressing industry wrote to the ACT Government with objections to the expansion of the Scheme, citing that traditional long service leave is already well suited to the industry.²⁹

Cost to employers

- 2.18. The second main point of concern amongst opposers to the Bill is that of the increased cost to employers. Under the current Scheme, registered employers are required to pay a levy of 1.07 to 2.10 percent of an employee's wage to finance that employee's long service leave. Stakeholders have raised concerns that an expansion of the Scheme will place an undue burden on business who are already struggling with the impacts of COVID-19, wage growth, and labour shortages.³⁰

- 2.19. A submission to the Government consultation from the Australian Industry Group (Ai Group), notes that previous estimates found that a proposed national portable leave scheme would cost more than four times what traditional long service leave arrangements cost, a burden which they considered outweighed the potential benefit to the community.³¹

- 2.20. The Canberra Business Chamber notes in their submission:

The expansion of the Portable Long Service Leave Scheme will create additional direct financial costs and additional administrative requirements for employers. The ACT Government's consultation paper does not provide any analysis of the impact on employers, actual evidence of benefits to the industry, or details of parallel legislative and regulatory reforms that should be introduced to offset costs.³²

- 2.21. Ai Group further expressed concerns that many of the industries proposed to be covered under the expanded Scheme are comprised of a high percentage of small businesses, and are more reliant on household revenue, than the cleaning and construction industries. Both these factors make them more vulnerable to market downturns, and the increased cost of an expanded Scheme could exacerbate any negative economic pressure they experience.³³

- 2.22. In their submission, ACTOCSS also raised that the cost of the scheme could have flow-on effects. They recommended that:

- all ACT Government funding contracts and indexation include the cost of the Scheme;
- the ACT Government be transparent about its investment of funds accrued under the Scheme; and

²⁹ ACT Government, *Expansion of portable long service leave in the ACT: Outcomes of public consultation*, p 3.

³⁰ ACT Government, *Expansion of portable long service leave in the ACT: Outcomes of public consultation*, p 3. Council of Small Business Organisations Australia, *Submission 10*, p 2.

³¹ Ai Group, *Portable Long Service Leave Expansion*, p 3.

³² Canberra Business Chamber, *Submission 3*, p 2.

³³ Ai Group, *Portable Long Service Leave Expansion*, p 6.

- funds accrued under the Scheme be re-invested back into the industries that are part of the Scheme.³⁴

Administrative burden on employers

- 2.23. Industry stakeholders raised concerns that expansion of the Scheme would place an additional administrative burden on businesses, particularly small businesses.³⁵
- 2.24. ACTCOSS noted that employers cannot currently access information regarding staff entitlements online and recommended that this service be made available.³⁶
- 2.25. The explanatory statement to the Bill says:

A transition period of two years for commencement of the expanded coverage is proposed to allow time for businesses and workers in the new industries to prepare for the changes and register with the Authority. It is further designed to ensure that the Authority's information technology systems and administrative services are ready for new entrants to the schemes.³⁷

Voluntary labour mobility

- 2.26. Portable leave schemes were designed to increase access to long service leave for workers in industries which have high levels of workplace mobility due to the nature of the work, for example seasonal or subject based work. Certain industry stakeholders maintain that 'the rationale for portable schemes does not exist in industries that lack this predominant feature.'³⁸
- 2.27. Ai Group argued in their submission that while there has been an increase in workplace mobility in Australia, it has been largely employee-driven, and therefore would not be a 'predominant feature' of the industries which would be covered under the expansion of the Scheme.³⁹ They stated:

In current circumstances where voluntary labour mobility is high and retrenchments are at an all time low, an expanded [Scheme] will only promote labour mobility at a time when this is clearly unnecessary, and the result of which is not in the interests of the ACT or national economy.⁴⁰

- 2.28. The Canberra Business Chamber also raised doubts that increased labour mobility in the hairdressing and beauty services and the accommodation and food services industries led to direct disadvantages to workers which could be redressed by an expansion of the

³⁴ ACTCOSS, *Submission 2*, p 1-2.

³⁵ ACT Government, *Expansion of portable long service leave in the ACT: Outcomes of public consultation*, p 3. Canberra Business Chamber, *Submission 3*, p 2. Council of Small Business Organisations Australia, *Submission 10*, p 2.

³⁶ ACTCOSS, *Submission 2*, p 3.

³⁷ *Long Service Leave (Portable Schemes) Amendment Bill 2022: Explanatory Statement and Human Rights Compatibility Statement*, p 4.

³⁸ The Education and Employment References Committee, *Feasibility of, and options for, creation a national long service standard*, p 6.

³⁹ Ai Group, *Portable Long Service Leave Expansion*, p 8.

⁴⁰ Ai Group, *Portable Long Service Leave Expansion*, p 9.

Scheme. They noted that that consultation paper did not give any ‘empirical evidence-base to demonstrate a benefit to employers or the precise benefit to employees.’⁴¹

Impact on female-owned businesses

- 2.29. A further concern raised by Ai Group was that the expansion of the Scheme into the hairdressing and beauty service industry could have an unintended negative consequence on gender equality by negatively impacting predominantly women-owned businesses.⁴²
- 2.30. The Council of Small Business Organisations Australia noted that the hairdressing industry of 85 percent female, and raised concerns that the expansion of the Scheme would severely impact an already struggling number of businesses:

The proposed changes would see many salon owners close their business, or be forced to employ less staff including apprentices. The proposed changes would encourage employers to become sole traders. As 70% of the industry’s businesses are now sole traders, there is a genuine concern regarding the sustainability of apprenticeships and the future of hairdressing skills development in Australia.⁴³

3. Committee comment

- 3.1. Several submitters expressed to the Committee their opinion that the consultation with industry stakeholders was insufficient. The Australian Hairdressing Council said in their submission to the Committee:

The AHC participated in a consultation meeting on 14 July, 2022 with the ACT Long Service Authority. [...] It was very apparent at this meeting dated Thursday 14 July, 2022 that the ACT Long Service Leave Authority had not consulted with the ACT small business community, particularly in Hairdressing or Beauty salons. We were advised that consultation would finish on Monday 18 July, 2022. The AHC has since spoken to our AHC members in the ACT, who find it unacceptable that they have been excluded from any consultation with the ACT Long Service Leave Authority.⁴⁴

- 3.2. Another submitter expressed their frustration over the timing of this Committee inquiry during the Christmas period, noting that it is the busiest time of year for many small businesses.⁴⁵
- 3.3. The Committee agrees that the timing of this inquiry has been unfortunate. According to resolution of the Legislative Assembly of the ACT, Committees have only two months in which to inquire into bills.⁴⁶ The Long Service Leave (Portable Schemes) Amendment Bill

⁴¹ Canberra Business Chamber, *Submission 3*, p 3.

⁴² Ai Group, *Portable Long Service Leave Expansion*, p 11.

⁴³ Council of Small Business Organisations Australia, *Submission 10*, p 2.

⁴⁴ Australian Hairdressing Council, *Submission 11*, p 2.

⁴⁵ Serene Hair and Body, *Submission 9*, p 2.

⁴⁶ Minutes of Proceedings, 2 December 2020, p 17.

2022 was presented in the Assembly on 22 November 2022, and the reporting date for committee inquiry was set for 23 January 2023.

- 3.4. The Committee aware that most stakeholders would have limited capacity to consider the Bill and prepare a submission to the inquiry over the Christmas period.
- 3.5. On occasion, a committee will request an extension of time of the reporting date by motion in the Assembly,⁴⁷ however this was not possible in this instance as the Assembly was not sitting until 7 February 2023, after the reporting date had already passed.
- 3.6. It is for this reason that the Committee decided to accept submissions for as long as possible until the reporting date. A media release was published announcing the inquiry on 12 December 2022, and invitations to make submissions were sent to key stakeholders, such as peak bodies and unions, in the following days.
- 3.7. The majority of submissions which have been received in this inquiry come from business owners and industry groups in the hairdressing sector. The Committee is grateful for these contributions, however is also concerned that the feedback which has been received has been largely one-sided, and is not representative of views of employees or of members of the food and accommodation service industries.
- 3.8. The Committee would like to see further consultation with industry and workers as the expansion of the Scheme is implemented.

Recommendation 1

The Committee recommends that the ACT Legislative Assembly pass the Long Service Leave (Portable Schemes) Amendment Bill 2022.

Recommendation 2

The Committee recommends that the ACT Government consider and address the specific issues brought up in the submissions to this inquiry.

Recommendation 3

The Committee recommends that the ACT Government work with industry and stakeholders in implementation of the expansion of the Long Service Leave Portable Schemes.

4. Conclusion

- 4.1. The Committee wishes to thank the ACT Government and other stakeholders for their submissions to this inquiry.

⁴⁷ Minutes of Proceedings, 24 November 2022, p 944.

4.2. The Committee has made three recommendations in relation to the Long Service Leave (Portable Schemes) Amendment Bill 2022.

Ms Leanne Castley
Chair
23 January 2023

Appendix A: Submissions

No.	Submission by	Received	Published
1	Eden Hair Energy	19/12/22	20/01/23
2	ACTCOSS	13/01/23	20/01/23
3	Canberra Business Chamber	17/01/23	20/01/23
4	Sassy Hair	19/01/23	20/01/23
5	Cataldo's Salon	19/01/23	20/01/23
6	Minister Gentleman	19/01/23	20/01/23
7	Australian Hairdressing Council	19/01/23	20/01/23
8	Serene Hair and Body	19/01/23	20/01/23
9	Australian Industry Group	19/01/23	20/01/23
10	Council of Small Business Organisations Australia	20/01/23	20/01/23