



Tabled, by leave,
Ms Sharpe
Clerk of the Parliament
25 / 9 / 24

PORTABLE LONG SERVICE LEAVE LEGISLATION AMENDMENT BILL 2024
STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Portable Long Service Leave Legislation Amendment Bill 2024 (**the Bill**) is needed to protect the long service leave registrations and prior service credits of workers on Commonwealth places in NSW. Currently, there is a cohort of building and construction, and contract cleaning workers at risk of losing their registration and service credits.

This risk exists because work on Commonwealth places cannot be recognised as service, which means it counts towards a four-year non-service threshold that triggers cancellation in both schemes. Currently, the *Building and Construction Industry Long Service Payments Act 1986* (BCI Act) requires the Long Service Corporation to cancel a worker’s registration if a worker has less than 5 years of service and there is no service recorded for four or more years. The *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* (CCI Act) requires cancellation regardless of the amount of prior service. These cancellation powers are automatic and have the effect of cancelling service credits for prior work on non-Commonwealth places.

The reason that work on a Commonwealth place cannot be recognised is that the NSW portable long service leave schemes do not currently apply to these places. Commonwealth places are sites the Commonwealth acquires for a public purpose and which it generally holds proprietary rights over, such as military bases and airports in NSW. The Commonwealth has exclusive power to make laws with respect to Commonwealth places in NSW. As such, the schemes cannot apply of their own force to Commonwealth places. A constitutional prohibition applies to every stage of the scheme, including not only the final act of levying an employer but also to the registration of a worker and their accrual of service credits for their work.

Objectives: What is the policy’s objective couched in terms of the public interest?

The primary objective of the Bill is to protect workers’ registrations and prior service credits while a more enduring solution is explored. It will aim to do this by prescribing work on a Commonwealth place in NSW as a protected non-service day that cannot trigger cancellation. This will ensure that workers are not forced to choose between maintaining their employment or their access to their entitlements already accrued.

It was never intended that a worker’s registration would be cancelled where they work solely on a Commonwealth place in NSW. The main purpose of the existing cancellation provisions is to ensure that the scheme recognises and rewards long service in the sector. Workers on Commonwealth places in NSW have not left the sector and as such should not face cancellation of their registration and entitlements.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The NSW Government considered alternative options but found that this issue requires legislative change. This is due to the statutory obligation for the Long Service Corporation to cancel the registrations of workers’ who exceed the four-year threshold on Commonwealth places in NSW. Various legislative drafting options were explored to

prevent the cancellation of registrations and loss of prior service credits, and to ensure that a cancelled registration can be restored if it was originally cancelled because of extended work on a Commonwealth place.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Variations of the key elements of the Bill (as above) were analysed to determine effectiveness, ease of administration and unintended consequences. For example, one option was to provide the Long Service Corporation with broader discretionary powers to prevent the cancellation of registrations. However, stakeholder advice suggested this may lead to adverse scrutiny and appeals for other issues like hardship.

The NSW Government determined that the most effective option was to provide for an additional 'non-service day' in the BCI and CCI Regulations. There is existing precedent as the Long Service Corporation already has the power to prescribe 'non-service days' that are to be treated as a day's service, for example, if a worker does not work because they are pregnant or sick. The Long Service Corporation applies this power to determine whether a registration should be cancelled or suspended. Additionally, this option does not alter the cancellation and suspension provisions in the Act, minimising the risk of new grounds for complaints and appeals. The amendments in the Bill are the most effective options to protect workers' registrations and service credits for prior work.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments will commence on assent. The Long Service Corporation administers both schemes and will be responsible for implementing the changes. Work has already begun to identify impacted workers and the intention is to have a remedy available as soon as possible.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Department consulted key stakeholders in developing the Bill including unions and sector peaks. Feedback provided by industry stakeholders and Commonwealth Government agencies helped shape the amendments in the Bill. Stakeholders generally agreed that the Bill is a positive step in the interim while an enduring solution to the broader issue is explored.