



New South Wales

Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2011

under the

Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.

GREG PEARCE, MLC
Minister for Finance and Services

Explanatory note

The objects of this Regulation are as follows:

- (a) to prescribe corresponding laws for the purposes of the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 (the Act)*,
- (b) to prescribe kinds of non-service days for the purposes of section 28 (3) and 29 (2) of the Act,
- (c) to provide for the process for the refund of long service levies paid under the Act on the cancellation of the registrations of workers,
- (d) to provide for the circumstances when breaks in a registered worker's engagement period may be counted as service credits under the Act,
- (e) to provide for additional kinds of information to be provided in returns made under the Act,
- (f) to extend the time for the making of appeals under the Act from 21 days to 42 days,
- (g) to make transitional provision for the lodging of appeals before the Contract Cleaning Industry Long Service Leave Committee begins to operate.

This Regulation is made under the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*, including sections 3 (1) (definition of **corresponding law**), 28 (3) and (8), 29 (2), 37 (1), 39 (2) (d), 41 (2) (definition of **required information**), 73 (1) (b) and 116 (the general regulation-making power) and clause 1 of Schedule 2.

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Explanatory note

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters of a savings or transitional nature.

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Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2011

under the

Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010

1 Name of Regulation

This Regulation is the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2011*.

2 Commencement

This Regulation commences on 1 July 2011 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

Director-General means the Director-General of the Department of Finance and Services.

the Act means the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Corresponding laws

Each of the following are declared to be a corresponding law for the purposes of the definition of **corresponding law** in section 3 (1) of the Act:

(a) the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* of Queensland,

(b) the *Long Service Leave (Portable Schemes) Act 2009* of the Australian Capital Territory (but only to the extent that it deals with the contract cleaning industry).

5 Non-service days

(1) The following are prescribed as non-service days for the purposes of sections 28 (3) and 29 (2) of the Act:

(a) any day on which a worker does not work because she is pregnant or has a pregnancy-related condition,

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- (b) any day on which a worker does not work because the worker is caring for another person in respect of whom the worker receives a Commonwealth carer allowance under the *Social Security Act 1991* of the Commonwealth,
 - (c) any day on which a worker is performing cleaning work as an employee of the Crown, a local council or county council under an arrangement that does not provide for making payments of long service benefits to the worker,
 - (d) any day on which a worker is performing cleaning work in another State or a Territory if:
 - (i) a corresponding law is not in force in the State or Territory, and
 - (ii) the cleaning work, if performed in this State by a registered worker, would be counted as recognised service under the Act,
 - (e) any day on which a worker does not work because the worker is suffering from personal illness or injury,
 - (f) any day on which a worker does not work because of a serious illness or death affecting the worker's immediate family or member of the worker's household.

Note. Section 28 (3) of the Act provides that any day that is prescribed as a non-service day by the regulations is to be treated as a day of service for the purpose of determining whether the Corporation must cancel a worker's registration because the worker has not been credited with at least one day's service for 4 consecutive years. Section 29 (2) of the Act makes similar provision in relation to the calculation of non-service days for the purposes of suspending a worker's registration.

- (2) In this clause:

county council means a county council established under the *Local Government Act 1993*.

immediate family has the same meaning as it has in the *Fair Work Act 2009* of the Commonwealth.

6 Refund of levy following cancellation of worker's registration

- (1) A levy paid in relation to a worker whose registration is cancelled by the Corporation is to be refunded in accordance with this clause.
- (2) A refund may be given:
 - (a) on the application of the employer or contractor who paid the levy, or
 - (b) on the Corporation's own initiative.

- (3) An application under subclause (2) (a) must be:
- (a) in the approved form, and
 - (b) made within the period of 30 days after the day on which the cancellation of the worker's registration takes effect.
- Note.** Section 28 (5) of the Act makes provision for when the cancellation of a worker's registration takes effect.
- (4) Any application under subclause (2) (a) may relate to more than one levy payment or worker.
- (5) A refund of a levy is to be paid by the Corporation to the employer or contractor who paid the levy.
- (6) However, the Corporation must decline to refund the levy if it is satisfied that the employer or contractor concerned has not paid the whole or part of any other levy payable by the employer or contractor. In that event, the refund may be made only after any such outstanding payment is made.

7 Service credit for breaks in engagement periods

The circumstances described for the purposes of section 37 (1) of the Act are that:

- (a) the registered worker has stopped being engaged as a worker by an employer (in the case of a worker who is an employee) or has stopped performing cleaning work as a contractor in the contract cleaning industry (in the case of a worker who is a contractor), and
- (b) any one or more of the following apply in relation to the registered worker:
 - (i) the registered worker is unable to perform cleaning work due to illness or injury that is certified in writing by a registered medical practitioner to be of such a nature as to render the worker reasonably unable to perform such work,
 - (ii) the registered worker is undertaking a training course recognised by the Corporation as being relevant to the contract cleaning industry in order to enhance the worker's prospects of performing work in the industry,
 - (iii) the registered worker is performing cleaning work on a voluntary basis in New South Wales as a result of an emergency declared or otherwise recognised under the *State Emergency and Rescue Management Act 1989* or under any similar Act of a State or Territory or of the Commonwealth,

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- (iv) the registered worker is performing light duty work (not being cleaning work) assigned to the worker in accordance with the *Workers Compensation Act 1987* as a result of an injury.

Note. Section 37 (1) of the Act provides that the Corporation may, on application by a registered worker, credit the worker with one day's service in the workers register for each day of any period not exceeding 3 months during which the Corporation is satisfied that, because of circumstances of a kind described by the regulations, the worker was not eligible to be credited with service under section 34 of the Act.

8 Additional information required in returns by employers and contractors

- (1) The following information is prescribed for the purposes of section 39 (2) (d) of the Act:
 - (a) the worker's registration number (if any),
 - (b) the worker's name, address and date of birth,
 - (c) the worker's business, home or mobile telephone number (if any).
- (2) The following information is prescribed for the purposes of paragraph (c) of the definition of **required information** in section 41 (2) of the Act:
 - (a) the contractor's registration number (if any),
 - (b) the contractor's name, address and date of birth,
 - (c) the contractor's business, home or mobile telephone number (if any).

9 Time for making appeals

The period of 42 days is prescribed for the purposes of section 73 (1) (b) of the Act.

10 Transitional provision—appeals to Committee before members appointed

- (1) This clause applies to an appeal that is made under Part 7 of the Act before the appointment of the members of the Committee in accordance with the requirements of section 9 of the Act has been completed.
- (2) An appeal to which this clause applies may be made by lodging a written notice of appeal with the Director-General setting out the following matters:
 - (a) the name, address and date of birth of the appellant and (if applicable) the registration number of the appellant, and
 - (b) the decision that is being appealed against (including the date on which the decision was made), and

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- (c) the provision of Division 2 of Part 7 under which the appeal is made.
- (3) The Director-General is to forward to the Committee any notice of appeal lodged with the Director-General under this clause as soon as is reasonably practicable after the process for the appointment of the members of the Committee has been completed.
- (4) An appeal that is lodged with the Director-General under this clause within the time required under section 73 (1) of the Act for the making of an appeal is taken to have been duly made to the Committee and may be determined by the Committee accordingly when the process for the appointment of the members of the Committee has been completed.