



New South Wales

Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2017

under the

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

His 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*.

DOMINIC PERROTTET, MP
Minister for Industrial Relations

Explanatory note

The object of this Regulation is to remake, without substantial amendment, the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2011*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation provides for the following matters:

- (a) the laws of the Australian Capital Territory and Queensland, where similar portable long service leave schemes for the contract cleaning industry operate, that are corresponding laws for the purposes of the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*,
- (b) the kinds of non-service days that are to be treated as service for the purposes of the cancellation or suspension of a worker's registration under the scheme,
- (c) the procedures for appealing to the Long Service Leave Committee against a decision of the Long Service Corporation,
- (d) the refund of long service levies paid in relation to a worker whose registration is cancelled,
- (e) the circumstances in which a break in a worker's engagement period is to be counted as service,
- (f) formal and savings matters.

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 and 116 (the general regulation-making power).

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 that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definition	3
4 Corresponding laws	3
Part 2 Cancellation and suspension of worker's registration	
5 Non-service days	4
6 Refund of levy following cancellation of worker's registration	4
Part 3 Appeals to Committee	
7 Time for making appeal	6
8 Making an appeal	6
9 Determination of appeal	6
Part 4 Miscellaneous	
10 Service credit for breaks in engagement periods	8
11 Additional information required in returns by employers and contractors	8
12 Savings	8

Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2017

under the

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

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2011*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

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

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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).

Part 2 Cancellation and suspension of worker's registration

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,
 - (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, a serious injury or a death affecting the worker's immediate family or a 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 under section 28 (1) 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.

Part 3 Appeals to Committee

7 Time for making appeal

- (1) For the purposes of section 73 (1) (b) of the Act, an appeal to the Committee against a decision of the Corporation is to be made within 42 days after the appellant is notified of the decision appealed against.
- (2) However, an appeal may be made up to 6 months after the appellant is notified of the decision appealed against, if the Chairperson of the Committee is satisfied that exceptional circumstances exist.

8 Making an appeal

- (1) An appeal to the Committee is to be made by lodging with the Committee Secretary a notice of appeal in the form approved by the Committee.
- (2) A notice of appeal must contain the following information:
 - (a) the decision, or the part of a decision, that is being appealed,
 - (b) the grounds of appeal,
 - (c) the contact details of the appellant and, if the appellant has engaged a legal representative, the contact details of the legal representative,
 - (d) whether the appellant intends to make oral submissions (either in person or with a legal representative) to the Committee in relation to the appeal,
 - (e) any other information required by the Committee.

Note. Section 82 of the Act contains additional requirements for a notice of appeal in relation to decisions by the Corporation under section 52 of the Act relating to interest on unpaid levies.

- (3) All correspondence, submissions and other documents in connection with an appeal, including any notice of the withdrawal of an appeal, are to be lodged with the Committee Secretary and are to be lodged within the time period (if any) specified by the Committee.
- (4) In this Part, *Committee Secretary* means a person nominated by the Chairperson of the Committee to send and receive correspondence on behalf of the Committee.

9 Determination of appeal

- (1) If the appellant has not indicated an intention to make oral submissions in the notice of appeal, the Committee may:
 - (a) determine the appeal based on the notice of appeal and any written submissions from the Corporation or the appellant, or
 - (b) request further information from the appellant in relation to the appeal and consider any information so provided in determining the appeal.

Note. The Committee may at any time refer the matter to the Corporation for reconsideration (see section 73 (3) of the Act).

- (2) If the Committee requests further information from the appellant, the appellant may indicate an intention to make oral submissions in relation to the appeal (either in person or with a legal representative).
- (3) If the appellant indicates an intention to make oral submissions in relation to the appeal (in the notice of appeal or following a request from the Committee for further information), the Committee Secretary is, in consultation with the Chairperson of the Committee, to determine a date and place for the hearing of the appeal.
- (4) At the hearing of an appeal, the appellant and the appellant's legal representative (if any) may:

- (a) address the Committee on any matter relating to the appeal, and
 - (b) with the approval of the Committee, produce any documents, records or information relating to the appeal.
- (5) The parties to an appeal (and their legal representatives) are not entitled to call a person to give evidence, or to cross examine any person, at the hearing of the appeal.
- (6) The Committee may adjourn the hearing of an appeal to a later date if the Committee considers it necessary to enable the Committee to consider any oral submissions made, or any documents, records or information produced, at the hearing.

Part 4 Miscellaneous

10 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,
 - (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.

11 Additional information required in returns by employers and contractors

- (1) For the purposes of section 39 (2) (d) of the Act, the following information must be included in a return:
 - (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.
- (2) For the purposes of paragraph (c) of the definition of **required information** in section 41 (2) of the Act, the following information is required:
 - (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.

12 Savings

Any act, matter or thing that, immediately before the repeal of the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.