

**NSW/ACT  
CATHOLIC EMPLOYERS'  
LONG SERVICE LEAVE PORTABILITY  
AGREEMENT**

**RELEASED ON 6 MAY 2019**

# **NSW/ACT CATHOLIC EMPLOYERS' LONG SERVICE LEAVE PORTABILITY AGREEMENT**

Disclaimer: It is recommended that Parties to this Agreement and / or participating employers seek independent legal advice with respect to any taxation obligations that might arise from this Agreement.

## **1. RECITALS**

- 1.1 This Agreement rescinds and replaces the *NSW/ACT Catholic Diocesan Employers' Long Service Leave Portability Agreement* dated 4 October 2016.
- 1.2 The Parties to this Agreement are the organisations listed in Annexure A.
- 1.3 The principal object of this Agreement is to provide a benefit to eligible employees by enabling the recognition of prior service for the purposes of long service leave.
- 1.4 The Parties to this Agreement acknowledge their joint role in advancing the mission of the Catholic Church and recognise the value of encouraging employees to maintain a commitment to this mission in a way that promotes their professional growth and accommodates their changing employment needs and goals.
- 1.5 The Parties to this Agreement acknowledge the need to inform eligible employees of their entitlements and obligations under this Agreement.

## **2. APPLICATION**

- 2.1 This Agreement applies to employees engaged by a participating employer but excludes employees who are covered by the long service leave portability provisions contained within Catholic Education Sector enterprise agreements, including Catholic Independent School enterprise agreements.
- 2.2 This Agreement shall take effect from 6 May 2019 and will remain in force until rescinded or replaced.

### **3. DEFINITIONS**

In this Agreement:

- 3.1 *"Parties"* means an organisation listed in Annexure A of this Agreement.
- 3.2 *"participating employer"* means the various employers of the Parties, including parish priests, agency heads and in some cases bodies corporate or Bishops. The identity of employers varies among the Parties and on request Parties will confirm their respective employers for the purpose of this Agreement.
- 3.3 *"relevant legislation"* means for NSW employees, the *Long Service Leave Act 1955 (NSW)* and for ACT employees, the *Long Service Leave Act 1976 (ACT)*.
- 3.4 *"Agreement"* means this document in its entirety, including its Annexures.
- 3.5 *"service"* means service as defined in the relevant legislation.
- 3.6 *"employee"* means an employee engaged by a participating employer who is eligible to have their service recognised under the relevant legislation. For the purposes of this Agreement, this definition excludes employees who are covered by the long service leave portability provisions contained within Catholic Education Sector enterprise agreements, including Catholic Independent School enterprise agreements
- 3.7 *"termination"* means the cessation of the employment relationship for any reason including resignation, dismissal, incapacity or redundancy.

### **4. ENTITLEMENT AND CONDITIONS**

- 4.1 Participating employers agree to recognise the prior service of an employee with another participating employer for the purposes of future long service leave accrual. Such agreement is subject to the employee meeting the eligibility requirements outlined at 4.3.
- 4.2 Except where 4.5 applies, where an employee is eligible to have their previous service recognised, a former participating employer agrees to remit monies to a new participating employer equal to the monetary value of the long service leave accrued during the former employment period.
- 4.3 For an employee to be eligible for recognition of prior service:

- 4.3.1 The prior service must have been for a continuous period of at least 12 months.
- 4.3.2 The commencement of employment with the new participating employer must commence within two months of the termination of employment with the former participating employer.
- 4.3.3 The termination of employment with the former participating employer must not have been for reason of serious misconduct.
- 4.4 Where prior service is recognised under this Agreement, the future rate of accrual from the commencement of employment will be consistent with the new participating employer's industrial instrument (notwithstanding that the accrual rate may have been different with the former participating employer).
- 4.5 A former participating employer is not required to remit monies, as per 4.2 above, if they have paid the employee a payment on termination in lieu of that period of long service leave (where eligible under the relevant legislation).
- 4.6 Where an employee has a long service leave entitlement i.e. they are eligible under the relevant legislation to take long service leave, and where they have elected for this leave to be transferred to the new participating employer (instead of being paid out the long service leave on termination), the new participating employer will recognise the employee's long service leave balance immediately on commencement of employment i.e. the employee will be able to request to access that leave immediately.

## **5. ADMINISTRATIVE ARRANGEMENTS**

- 5.1 Upon notice of termination, and if the employee meets the eligibility requirements outlined at 4.3 above, a participating employer shall provide the terminating employee with a copy of:
- List of Parties (Annexure A)
  - Employee Information Sheet (Annexure B)
  - Application Form to Recognise Prior Service for the Purposes of Long Service Leave (Annexure C)

For their service to be recognised by the new participating employer, the employee must submit Part One of the Application Form to the new participating employer, and provide a copy to the employer they are

ceasing to be employed by (the 'former participating employer') within the following time:

- (i) If the employee *is* eligible under relevant legislation to be paid out their long service leave entitlement with their former participating employer, then Part One of the Application Form must be submitted when they provide notice of termination, or by no later than their last day of employment with the former participating employer, unless they do not wish to transfer the leave balance (and only wish to have their prior service recognised) in which case subclause 5.1(ii) applies.
- (ii) If the employee *is not* eligible under relevant legislation to be paid out their long service leave entitlement with their former participating employer, or they have had (or will have) their entitlement paid out by their former participating employer, then Part One must be submitted within 14 days of the employee commencing duties with the new participating employer.

5.2 Within **7 days** of receiving the Application Form from the employee, the new participating employer is to complete Part Two of the form, retain a copy, and forward the original Application Form to the former participating employer.

5.3 On receipt of the Application Form, the former participating employer is to complete 'Part Three'. Once completed, the former participating employer is to place a copy of the Application Form on the employee's personal file. The original fully completed Application Form and the monetary amount of the entitlement (where relevant) must be sent to the new participating employer at the applicable time as follows:

- (i) If the employee *is* eligible under relevant legislation to be paid out their long service leave entitlement with their former participating employer, and has elected to have their leave balance transferred, then the monetary amount must be transferred to the new participating employer (in lieu of being paid directly to the employee) when the employee's employment with the former participating employer terminates, or within 7 days after receiving the Application Form from the new participating employer, whichever occurs sooner.
- (ii) If the employee *is not* eligible under relevant legislation to be paid out their long service leave entitlement with their former participating employer, or they were eligible but elected to have their entitlement paid out by their former participating employer on termination, then the monetary amount must be transferred to the

new participating employer within 28 days of receiving the Application Form from the new participating employer.

- 5.4 On receipt of the remitted money, the new participating employer will place a copy of the Application Form on the employee's personal file and advise the employee of the outcome of the Application.
- 5.5 If an employee ceases their employment prior to becoming eligible for long service leave under the relevant legislation, and the participating employer where the employee ceased employment has had money remitted to them for that leave, that participating employer will remit the money received at the time of transfer back to the former participating employer.

## **6. DISPUTES PROCEDURE**

- 6.1 Any disputes arising between the Parties in relation to matters set out in this Agreement will be referred to the Executive Director, Catholic Commission for Employment Relations (CCER) or their delegate for resolution and final determination.
- 6.2 In the event that CCER is a party to a dispute in relation to matters set out in this Agreement, the parties will seek to agree on the appointment of an independent person or organisation to facilitate the resolution and final determination of the dispute.

## **7. TERMINATION**

A Party can remove themselves as a Party from this Agreement by giving eight (8) week's notice in writing to the Executive Director, CCER. A new Agreement will then be released and re-sent to all other Parties, with the terminating Party's details removed.

## ANNEXURE A

### LIST OF PARTIES

as at 6 May 2019

The Diocese of Armidale	Presentation Sisters, Wagga Wagga
The Diocese of Bathurst	Sisters of Charity
The Diocese of Broken Bay	Sisters of Mercy, Parramatta
The Archdiocese of Canberra and Goulburn	Sisters of St Joseph NSW Province
The Diocese of Lismore (including Centacare Port Macquarie)	Sisters of St Joseph of the Sacred Heart
The Diocese Maitland-Newcastle	Edmund Rice Education Australia
The Diocese Parramatta	Good Samaritan Education
The Archdiocese of Sydney	Mary Aikenhead Ministries
The Diocese of Wagga Wagga	MacKillop Rural Community Services
The Diocese of Wilcannia-Forbes	Christian Brothers Oceania Province
The Diocese of Wollongong	St Anthony's Family Care
Ursuline Sisters	The Order of Hermits of St Augustine in Australasia
Dominican Sisters of Eastern Australia	St Francis Social Services
Marist Brothers	St Joseph's Cowper Ltd
Missionaries of the Sacred Heart	Catholic Commission for Employment Relations
Family Spirit Ltd	Institute of Sisters of Mercy of Australia and Papua New Guinea (Employees based in NSW only).

CatholicCares and CentaCares of the above Dioceses and the Archdiocese of Sydney are included in this Agreement, with the exception of CatholicCare Canberra Goulburn and CentaCare Wilcannia-Forbes, who are not considered Parties to this Agreement.

Catholic Education Offices (CEOs) are also included however this Agreement does not apply to employees who are covered by the long service leave portability provisions contained within Catholic Education Sector enterprise agreements.

## ANNEXURE B

### EMPLOYEE INFORMATION SHEET

The NSW/ACT Catholic Employers' Long Service Leave Portability Agreement allows eligible employees of Parties to have their previous service recognised for the purposes of future long service leave accrual, in recognition of employees' contribution to advancing the mission of the Catholic Church.

The Parties are those listed in Annexure A.

For an employee to be eligible to have their previous service recognised by an employer of a Party to this Agreement, they must meet all of the following requirements:

- completed at least 12 months continuous service with an employer of a Party to this Agreement; and
- must commence employment with another employer of a Party to this Agreement within two months of the termination of employment at the former employer; and
- they must not have been terminated by the former employer for reason of serious misconduct.

In addition to recognition of prior service, if an employee is eligible under the applicable legislation to be paid out their long service leave entitlement with their former participating employer, they can elect for this to occur, or alternatively they can instead elect for their long service leave balance to be transferred to their new participating employer (instead of the monetary value being paid out by their former participating employer on termination).

The employee's leave balance can only be transferred if the employee has notified their former participating employer of this election, by completing Part One of the *Application Form to Recognise Prior Service for the Purposes of Long Service Leave* ('the Application Form'), and submitting this form to their former participating employer and the new participating employer immediately when they provide notice of termination, or by no later than their last day of employment with their former participating employer.

Employees should carefully consider this election, as in some circumstances it may be more advantageous to the employee to be paid out their long service leave entitlement rather than transfer the leave balance, for example when moving from full-time to part-time employment.

If the employee is not eligible under relevant legislation to be paid out their long service leave entitlement with their former participating employer, or they have been (or will be) paid out their long service leave entitlement with their former participating employer,



then the employee is required to complete and submit Part One of the Application Form to their new participating employer within 14 days of commencing duties with them.

Employees should note that this Agreement provides for the recognition of prior service only and that future long service leave accrual will be in line with the relevant industrial instrument of the new employer.

## Application Form to Recognise Prior Service for the Purposes of Long Service Leave

### PART ONE (employee to complete)

#### Recognition of Prior Service

Complete Part One of this Form and forward it to your new employer (and provide a copy to your former employer) within the required timeframe specified in the Agreement.

*Please note: your 'former employer' as referred to in this Application Form, is the employer you are leaving prior to commencing employment with your new employer.*

First Name: \_\_\_\_\_

Surname: \_\_\_\_\_

I believe that I may be eligible to have my service recognised with my new employer as I have answered 'yes' to all of the eligibility criteria below:

ELIGIBILITY REQUIREMENT	Yes	No
My former employer is a 'Participating Employer' as defined in clause 3.2 of the Agreement		
I have completed at least 12 months continuous service with my former employer		
My employment did not end due to serious misconduct		
My new employer is a 'Participating Employer' as defined in clause 3.2 of the Agreement		
I am commencing employment with my new employer within 2 months of ceasing my employment with my former employer		

**ADMINISTRATIVE REQUIREMENTS** (please complete **one** of the tables below)

**1. ELECTION TO TRANSFER MY LEAVE BALANCE**

If I <b>am entitled</b> to take long service leave due to my length of service, and I wish to elect to have my leave balance transferred:	Yes	No
I am completing this part of the form (Part One) no later than my last day of employment with my former employer		
I confirm that I will not be paid out the balance of my long service leave entitlement by my former employer based on this election		
I understand that I will not receive any payment in respect of long service leave from my former employer as my long service leave balance has been transferred across to my new employer		
I hereby release and discharge my former employer from all claims and/or actions arising from any amounts which my former employer would have been required to pay me under the applicable long service leave legislation and/or relevant industrial instrument		
I agree that all amounts of long service leave which may be due to me pursuant to relevant legislation and/or applicable industrial instruments will be remitted to my new employer		

OR

**2. ELECTION FOR RECOGNITION OF SERVICE**

If I <b>am not entitled</b> to take long service leave due to my length of service, <b>or I have had (or will have) my entitlement paid out to me by my former employer on termination</b> , I am completing this part of the form (Part One) no later than 14 days after commencing duties with my new employer.	Yes	No

Name of former employer: \_\_\_\_\_

Commencement Date with former employer: \_\_\_\_\_

Date my employment with my former employer ends \_\_\_\_\_

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

Application Form to Recognise Prior Service for  
the Purposes of Long Service Leave

**PART TWO (new employer to complete)**

New Employer: \_\_\_\_\_

Position: \_\_\_\_\_

Contact Details: \_\_\_\_\_

Upon your confirmation, I believe that \_\_\_\_\_  
has met the eligibility requirements provided under the *NSW/ACT Catholic  
Employers' Long Service Leave Portability Agreement* (the Agreement) to have their  
prior service recognised for the purposes of long service leave.

**COMPLETE ONLY IF THE EMPLOYEE WAS NOT PAID OUT LONG SERVICE  
LEAVE UPON THE CESSATION OF THEIR EMPLOYMENT**

In accordance with the Agreement, I am requesting that you remit the monetary  
amount of this employee's long service leave balance to:

Name: \_\_\_\_\_

Preferred Method of Transfer: \_\_\_\_\_  
(Bank Transfer, Cheque, Cash etc)

Bank Details:

Account Name: \_\_\_\_\_

BSB: \_\_\_\_\_

Account Number: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# Application Form to Recognise Prior Service for the Purposes of Long Service Leave

## **PART THREE (former employer to complete)**

Former Employer: \_\_\_\_\_

Position: \_\_\_\_\_

I confirm \_\_\_\_\_ has correctly completed  
Part ONE and therefore meets the eligibility requirements under the Agreement.

### **ONLY COMPLETE IF YOU HAVE NOT PAID OUT THE EMPLOYEE THEIR LONG SERVICE LEAVE ON CESSATION OF EMPLOYMENT**

Total Long Service Leave (LSL) balance in weeks: \_\_\_\_\_ weeks **(A)**  
*\*Note: this is the total balance which takes into consideration LSL already taken (if applicable)*

To calculate the monetary amount to be transferred, multiply the above weeks by  
the applicable weekly rate of pay as follows:

Ordinary Weekly Rate of Pay: \_\_\_\_\_ \$ **(B)**  
*(as per the definition in the applicable legislation)*

Total Monetary Balance to be Transferred: = (A x B) \$ \_\_\_\_\_ **(C)**

Date that the Balance was Transferred: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date