



February Members Update

Dear member,

Welcome to the February 2019 member's update.

This month we look at a common question received by our helpdesk:

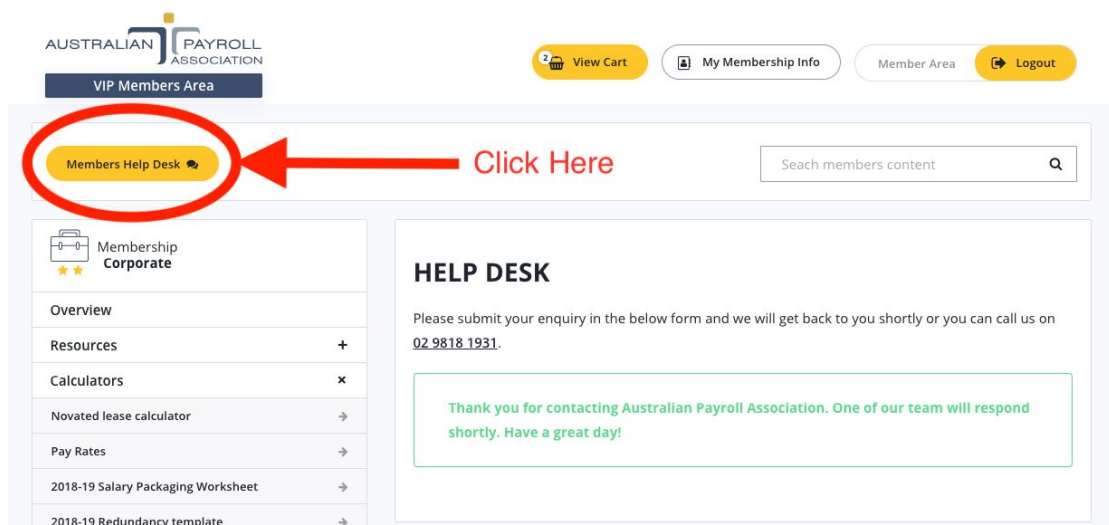
Which long Service Leave provisions apply to a worker who is transferred to a different State/Territory or overseas during the course of their employment?

But, before we look at this question, there are now 3 ways to contact the Australian Payroll Associations Member's Helpdesk.

The processes outlined below will assist in your query being handled in a timely manner - as you may be aware, our advisors are sometimes conducting audits or training, may be in meetings or have other commitments that restricts them from addressing your query in a timely manner.

Therefore, you can now;

1. Email directly to helpdesk@austrpayroll.com.au
2. Phone 02 9818 1931 and ask for the helpdesk with your membership details to hand
3. Log into the Members Portal and submit an enquiry. Follow the below steps to do so;
 - a. Visit austrpayroll.com.au
 - b. Click *Member Login* in the top right, or *Member Area* if already signed in
 - c. Submit your query by clicking *Members Help Desk* in the top left



What Long Service Leave provisions apply for a worker who is transferred to a different State/Territory or overseas



Let's start with leave provisions when a worker is transferred between States/Territories:

As a basic rule of thumb, the provisions that apply are as per the Act for the State/Territory where the worker is taking leave or terminating.

So, for example;

- Maria works in NSW for 5 years and is transferred to SA.
- After another 5 years of service, Maria requests to take LSL.
- Maria's length of continuous service is 10 years and, as she is in SA, the SA LSL Act applies and Maria is entitled to 13 weeks of LSL



Let's look at another example:

- Maria works in NSW for 5 years and is transferred to QLD.
- Unfortunately the QLD role did not work out and the role is made redundant within a year.
- Maria's length of continuous service is 6 years and, as she is in QLD, the QLD LSL Act applies and therefore Maria does not have an entitlement to pro rata LSL on termination of employment as, in QLD, the length of continuous service for payment of pro-rata LSL on termination of employment due to redundancy is 7 years.
- If the exact same scenario applied with the only difference being that the transfer was from QLD to NSW, Maria would have received her pro-rata LSL on termination of employment because in NSW, the entitlement to this payment occurs after 5 years continuous service.

What about overseas service?

The LSL Acts do not apply or address overseas service – this should be addressed when the worker is transferred. And we all know that this doesn't usually happen – it is always after the employee returns from overseas service or a termination occurs that this issue arises.

Any “disputes” as to whether an employee's overseas service counts towards service for LSL purposes would need to be resolved between employer and employee however, if they cannot be resolved and the matter is escalated to the relevant State/Territory Industrial Relations Commission and the tribunal will look at the following type of scenarios:

- was the employee originally employed in Australia?
- was the employee sent overseas by the employer or at the request of the employee for personal reasons more so than for the benefit of the employer/company
- is it intended that the employee will return to Australia for the remainder (or a substantial portion of their employment in the future?
- Is the termination of employment occurring whilst the worker is in Australia?



Our February 2019 webinar will be held on 21st February at 2pm – please join me as we look at “OTE for superannuation purposes – payments that are OTE and payments that are not OTE”

[Register here.](#)

Australian Payroll Associations 2019 Classroom training schedule is well underway, and members receive discount on all short training courses.

You can [book your tickets](#) here.

Kind regards,

Maria Nikoletatos
Chief Knowledge Officer