

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

ANNUAL LEAVE (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

**Circulated by authority of
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General Outline

The Bill amends the Annual Holidays Act 1973 by introducing a range of minor and technical amendments aimed at streamlining the Act, overcoming ambiguity in interpretation and making it more user friendly.

Short Title

Clause 1 refers to the short title of the Act. The Bill proposes that the Act be renamed the *Annual Leave Act 1973* to more accurately reflect its subject matter and to distinguish it from the *Holidays Act 1958* which deals with public holidays (see Clause 5).

Commencement

Clause 2 provides for the Bill to commence on notification in the Gazette or, in relation to the substantive provisions, within a period of six months after Sections 1, 2 and 3 commence. This is a standard commencement clause.

Clause 3 identifies the Principal Act being amended by the Bill.

Long Title

Clause 4 repeals the current long title for the Act and provides a new long title.

Clause 5 amends the short title of the Act, so that in future the Act will become the *Annual Leave Act 1973*.

Interpretations (definitions)

Clause 6 amends the interpretations (definitions) section of the Act.

Clause 6(a) alters the definition of agreement so that agreement means an agreement under the *Workplace Relations Act 1996*.

Clause 6(b) and (c) replaces the reference to the former *Conciliation and Arbitration Act 1904* with the *Workplace Relations Act and Other Legislation Amendment Act 1996*

Clause 6(d) deletes the reference to a determination in the definition of award.

Clause 6(e) repeals the current definition of authorised officer and replaces it with a new definition of authorised officer (see New Section 14B).

Clause 6(f) repeals the definition of determination.

Clause 6(g) inserts a new definition for. (i) approved training agreement; (ii) trainee; and (iii) training agreement

Clause 6(h) enhances the definition of who is an employee for the purposes of the Principal Act by. (i) providing that a person paid wholly by commission is an employee for the purposes of the Act, in addition to persons paid solely by salary or wages, or by a combination of salary or wages and commission, and (ii) that a trainee as defined is also an employee (in addition to apprentices) for the purposes of the Act

General provisions

Clause 7 reformulates current Section 4(3) which establishes the annual leave entitlement, so that the provision is expressed in positive terms. The provision establishes the circumstances where an employee, including a casual employee, who works a specified number of hours per week, or where the employee did not receive a pay loading in substitution of annual leave, is entitled to annual leave. The Clause also specifies that it is the records to be kept by an employer which will be the source of the information from which a determination will be made as to whether an employee has received a pay loading. The Clause also reduces the hours which must be worked before the entitlement to annual leave may accrue - from 24 to 22.8 hours per week to reflect the reduction in the standard working week from 40 hours to 38 hours since the Act originally commenced in 1973.

Clause 8 reformulates the provisions of Section 6 of the Act which establishes the annual leave pay entitlement so that it is expressed as a formula for ease of usage. The reformulation of the provision into a formula common is a common drafting feature in ACT legislation. The essence of the Section (currently, and it remains unchanged by the introduction of a formula) is that where an award or agreement provides a lesser amount of annual leave than specified by the Act, the employee is entitled to payment for annual leave as if the employee had continued working and to an additional payment calculated in accordance with the formula.

Clause 9 substitutes authorised officer for prescribed officer in relation to the name of the official with responsibility for administering the Act. The Clause also clarifies the operation of the forfeiture provision in Section 7(2) of the Principal Act by making that provision void unless the employer has given written notice to the employee in accordance with Section 7(5) of the Principal Act. The Clause also relocates, in so far as it is applicable, the general offence provision at current Section 15 (part of which is repealed - see Clause 13) and relocates it against Section 7, where an offence can be created under Section 7(5).

Clause 10 reformulates the close down provisions in Section 12 by inclusion of a formula to assist with calculation of the entitlement. The introduction of a formula does not alter the existing entitlement in Section 12 of the Principal Act.

Records

Clause 11 repeals the existing Section specifying the records which must be kept by an employer pursuant to the operation of the Act, and replaces it with a more comprehensive and relevant list of records to be kept. Also Clause 11 clarifies the penalties which apply to this Section, and in particular, specifies the different penalties which apply to natural persons and to a body corporate. It specifies the penalty for the offence of failing to keep records and failing to make available records when requested by an authorised officer. The penalties specified are standard for offences of the nature identified.

Grievance Management and Compliance Procedures

Clause 12 introduces new Section 14 establishing grievance management and compliance procedures. The grievance management regime establishes a two part procedure: (i) a conciliation process; and (ii) a compliance direction power.

New Section 14A provides for the appointment of a Registrar of Annual Leave.

New Section 14B provides for the appointment of authorised officers (formerly prescribed officer and authorised officer). The Chief Executive may appoint a Commonwealth public servant as an authorised officer.

New Section 14C provides for the issuing of identity cards to the Registrar and authorised officers, by the Chief Executive.

New Section 14D sets out the powers of entry of authorised officers which enables such officers to enter premises with the consent of the employer, to inspect records and to make copies, or take extracts, of records.

New Section 14E provides a procedure for dealing with complaints. The central feature of the new Section is that it empowers an authorised officer to require the parties in dispute to attend a conciliation conference to attempt to resolve disputes under the legislation.

New Section 14F empowers an authorised officer to require an employer, by notice in writing, to comply with the Act.

New Section 14G provides, at the request of an employer, for a review by the Registrar of a requirement to comply notice issued by an authorised officer under a new Section 14F.

New Section 14H provides for a review of a decision of the Registrar arising from Sections 14F and 7(2), by the Administrative Appeals Tribunal.

New Section 14J establishes a penalty for obstructing or hindering an authorised officer and for contravening a requirement to comply with the Act.

New Section 14K indemnifies the Registrar and authorised officers from civil or criminal proceedings in relation to actions taken in connection with the performance of their powers under the Act or Regulations.

New Section 14L provides for the Registrar to delegate the Registrar's powers except the power of review under new Section 14G.

Clause 13 amends the offences Section of the Principal Act (Section 15) by identifying the penalties to apply to an offence by a natural person and by a body corporate. The Clause also repeals the general offence provision. Note that offence provisions are now located against the Section of the Act to which they apply.

Regulations

Clause 14 repeals the existing Regulation making power and replaces it with a standard Regulation making power

Schedule

Clause 15 refers to a Schedule of minor but formal amendments, most of which reflect the new usage of the term annual leave rather than annual holiday.