

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations)

Long Service Leave Amendment Bill 2005

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(As presented)

(Minister for Industrial Relations)

Long Service Leave Amendment Bill 2005

A Bill for

An Act to amend the *Long Service Leave Act 1976*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Long Service Leave Amendment Act 2005*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written
5 notice.

6 *Note 1* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be
9 fixed, for the commencement of different provisions (see Legislation
10 Act, s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the
12 notification day, it automatically commences on the first day after that
13 period (see Legislation Act, s 79).

14 **3 Legislation amended**

15 This Act amends the *Long Service Leave Act 1976*.

16 **4 Section 1**

17 *substitute*

18 **Part 1 Preliminary**

19 **1 Name of Act**

20 This Act is the *Long Service Leave Act 1976*.

21 **5 Interpretation for Act**
22 **Section 2 (1), definitions of *associated company*, *award***
23 ***holiday*, *continuous service* and *minimum retiring age***

24 *omit*

6 Section 2 (1), definitions (as amended)

relocate to dictionary

7 Section 2, remainder

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*period of service*—see section 2G.' means that the term 'period of service' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Important concepts**2C Commission recipients may be employees**

A person may be an employee for this Act even though the person is paid completely or partly by commission.

2D Benefits under this Act and LSL (BCI) Act

(1) This section applies to an employee who—

- 1 (a) is registered under the LSL (BCI) Act; and
2 (b) has elected under that Act, section 63 to take long service
3 benefits under that Act for a period stated by the employee.
- 4 (2) The employee's election does not prevent the employee from
5 receiving benefits under this Act.
- 6 (3) However, the employee is not entitled to a benefit under this Act for
7 a period for which the employee has received a benefit under the
8 LSL (BCI) Act.
- 9 (4) In this section:
- 10 *LSL (BCI) Act* means the *Long Service Leave (Building and*
11 *Construction Industry) Act 1981*.

12 **2E Benefits under this Act and LSL (CCI) Act**

- 13 (1) This section applies to an employee who—
- 14 (a) is registered under the LSL (CCI) Act; and
15 (b) has elected under that Act, section 64 to take long service
16 benefits under that Act for a period stated by the employee.
- 17 (2) The employee's election does not prevent the employee from
18 receiving benefits under this Act.
- 19 (3) However, the employee is not entitled to a benefit under this Act for
20 a period for which the employee has received a benefit under the
21 LSL (CCI) Act.
- 22 (4) In this section:
- 23 *LSL (CCI) Act* means the *Long Service Leave (Contract Cleaning*
24 *Industry) Act 1999*.

1 **2F Working out remuneration—employee also receives**
2 **commission**

3 (1) To work out the ordinary remuneration of an employee who, during
4 a year, is paid completely by commission, or partly by salary or
5 wages and partly by commission—

6 (a) the employee is taken to be paid completely by salary or wages
7 throughout the year; and

8 (b) the amount payable for salary or wages to the employee in
9 relation to a week in the year is taken to be the following:

$$\frac{\text{total payable}}{52}$$

11 (2) In this section:

12 *total payable*, for a year, means the total amount payable to the
13 employee for the year as commission, salary or wages.

14 **2G Periods of service**

15 (1) In this Act:

16 *period of service*, as an employee, means a period of continuous
17 service as the employee of a particular employer.

18 (2) However, in working out an employee's period of service, the
19 following interruptions of the period of service do not break the
20 continuity of service:

21 (a) an interruption caused by an industrial dispute if the employee
22 returns to the service of the employer in accordance with the
23 terms of settlement of the dispute;

24 (b) a period when an employee is stood down by his or her
25 employer because of slackness of trade if the employee is re-
26 employed by the employer within 6 months after the day the
27 employee is stood down;

- 1 (c) a period, other than a period mentioned in the dictionary,
2 definition of *continuous service*, paragraph (a) or (b), when the
3 employee is absent with the employer's leave;
- 4 (d) a period when the employee is absent because of injury arising
5 out of or in the course of the employment;
- 6 (e) any other interruption, including ending of service by the
7 employer (other than with the intention of avoiding the
8 granting of long service leave), if the employee returns to the
9 employer's service within 2 months after the day the service is
10 interrupted;
- 11 (f) service by the employee as a member of the Defence Force,
12 other than as a member rendering continuous full-time service;
- 13 (g) service during a period when an employee was temporarily
14 outside the ACT.
- 15 (3) Also, an interruption of an employee's service of longer than 2
16 months does not break the continuity of service if the interruption is
17 caused by the seasonal nature of the work.
- 18 (4) To remove any doubt, the period of the interruption under
19 subsection (2) or (3) must not be taken into account in working out
20 the total period of service.

21 **Example**

22 Fiona starts work in the cosmetics department of Desmond James ('DJ's'), a
23 department store, on 1 January 1992. She works there until 31 December 1994,
24 when she quits to take up a position with Gray's Brothers, a competing
25 department store. She doesn't like the new manager and returns to her old job at
26 DJ's on 1 February 1995. On 1 June 1995 there is a strike which continues till
27 30 September 1995, after which Fiona returns to work in accordance with the
28 terms of settlement of the dispute. On 1 August 1999 Fiona injures herself at
29 work and is unable to return to work until 1 December 1999. The cumulative
30 absences of 9 months do not count as service, postponing her entitlement, but do
31 not break continuity of service. Her 10 years long service leave falls due on
32 1 October 2002.

1 **4 Amount of long service leave**

2 An employee accrues long service leave at the rate of $\frac{1}{5}$ of a
3 month's leave for each year of service.

4 **9 Sections 13 and 13A**

5 *substitute*

6 **Part 3 Administration and enforcement**

7 **13 Registrar of long service leave**

8 (1) The chief executive must appoint a public servant as the registrar of
9 long service leave.

10 *Note 1* For the making of appointments (including acting appointments), see
11 the Legislation Act, pt 19.3.

12 *Note 2* In particular, a person may be appointed for a particular provision of a
13 law (see Legislation Act, s 7 (3)) and an appointment may be made by
14 naming a person or nominating the occupant of a position (see s 207).

15 (2) The registrar of long service leave has—

16 (a) the functions directed by the Minister; and

17 (b) any other function given to the registrar under this Act.

18 *Note 1* A reference to an Act includes a reference to the statutory instruments
19 made or in force under the Act, including any regulation (see
20 Legislation Act, s 104).

21 *Note 2* A provision of a law that gives an entity (including a person) a function
22 also gives the entity powers necessary and convenient to exercise the
23 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

24 (3) If—

25 (a) immediately before the commencement of this section, the
26 duties of an office in the public service included exercising the
27 functions of the registrar; and

- 1 (b) the chief executive has not made an appointment under
2 subsection (1); and
- 3 (c) the duties of the office have not ceased to include exercising
4 the functions of the registrar;
- 5 the public servant for the time being occupying the office is the
6 registrar.
- 7 *Note* **Occupying** a position is defined in the Legislation Act, dict, pt 1 (see
8 also def **office**).
- 9 (4) Subsection (3) is a law to which the Legislation Act, section 88
10 (Repeal does not end effect of transitional laws etc) applies.
- 11 (5) Subsections (3) and (4) and this subsection expire 1 year after the
12 day this section commences.

13 **13A Appointment of authorised officers**

- 14 (1) The chief executive may appoint a public servant to be an authorised
15 officer for this Act.

16 *Note 1* For the making of appointments (including acting appointments), see
17 the Legislation Act, pt 19.3.

18 *Note 2* In particular, a person may be appointed for a particular provision of a
19 law (see Legislation Act, s 7 (3)) and an appointment may be made by
20 naming a person or nominating the occupant of a position (see s 207).

- 21 (2) If—
- 22 (a) immediately before the commencement of this section, the
23 duties of an office in the public service included exercising the
24 functions of an authorised officer; and
- 25 (b) the chief executive has not made an appointment in relation to
26 the office under subsection (1); and
- 27 (c) the duties of the office have not ceased to include exercising
28 the functions of an authorised officer;

1 the public servant for the time being occupying the office is an
2 authorised officer.

3 *Note* **Occupying** a position is defined in the Legislation Act, dict, pt 1 (see
4 also def **office**).

5 (3) Subsection (2) is a law to which the Legislation Act, section 88
6 (Repeal does not end effect of transitional laws etc) applies.

7 (4) Subsections (2) and (3) and this subsection expire 1 year after the
8 day this section commences.

9 **10 New part 4 heading**

10 *before section 14, insert*

11 **Part 4 Miscellaneous**

12 **11 Application of Act**
13 **New section 16 (4) and (5)**

14 *insert*

15 (4) Subsections (1), (2) and (3) are laws to which the Legislation Act,
16 section 88 (Repeal does not end effect of transitional laws etc)
17 applies.

18 (5) This section expires on the day the *Long Service Leave Amendment*
19 *Act 2005* commences.

12 New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- chief executive (see s 163)
- function
- month
- notifiable instrument (see s 10)
- public servant.

associated company means a company that is a subsidiary, holding company or related body corporate under the Corporations Act, section 9.

award holiday means a day that is, under an award or agreement, a holiday for people employed in an industry.

continuous service, in relation to an employee, includes—

- (a) a period of annual leave or long service leave; and
- (b) a period of leave, not exceeding 2 weeks in any 1 year, taken because of illness or injury; and
- (c) a period during which the service of the employee is interrupted or ended by his or her employer with the intention of avoiding the granting of long service leave; and
- (d) for an employee who begins service with an employer within 1 year after the day the employee's apprenticeship, or an approved training contract, with the employer ends—the period of the apprenticeship or approved training contract.

- 1 ***minimum retiring age***, in relation to a person, means—
- 2 (a) if a minimum retiring age applies to the person under an award
- 3 or agreement—the age fixed by the award or agreement; and
- 4 (b) in any other case—the age of 65 years.
- 5 ***period of service***—see section 2G (Periods of service).

1 **Schedule 1 Criminal Code harmonisation**
2 **amendments**

3 (see s 3)

4 **[1.1] New section 2B**

5 *in part 1, insert*

6 **2B Offences against Act—application of Criminal Code etc**

7 Other legislation applies in relation to offences against this Act.

8 *Note 1 Criminal Code*

9 The Criminal Code, ch 2 applies to all offences against this Act (see
10 Code, pt 2.1).

11 The chapter sets out the general principles of criminal responsibility
12 (including burdens of proof and general defences), and defines terms
13 used for offences to which the Code applies (eg *conduct*, *intention*,
14 *recklessness* and *strict liability*).

15 *Note 2 Penalty units*

16 The Legislation Act, s 133 deals with the meaning of offence penalties
17 that are expressed in penalty units.

18 **[1.2] Section 6**

19 *substitute*

20 **6 Grant of leave**

21 (1) An employer commits an offence if—

22 (a) an employee of the employer becomes entitled to long service
23 leave; and

24 (b) the employer does not grant the leave—

1 (i) as soon as practicable, having regard to the needs of the
2 employer's business, after the employee becomes entitled
3 to the leave; or

4 (ii) if the employer and employee agree—at another time or
5 times.

6 Maximum penalty: 50 penalty units.

7 (2) An employer commits an offence if the employer does not, at least
8 60 days before the date from which long service leave is to be taken,
9 give the employee written notice of the date.

10 Maximum penalty: 50 penalty units.

11 (3) Subsection (2) does not apply if the employee agrees otherwise.

12 (4) An offence against this section is a strict liability offence.

13 (5) Long service leave may only be granted for less than 1 month if the
14 employer and employee agree.

15 **[1.3] Section 8 (1)**

16 *substitute*

17 (1) An employer commits an offence if the employer does not pay an
18 employee for long service leave—

19 (a) in advance for the whole period of the long service leave; or

20 (b) at the same times as the employer would have paid the
21 employee if the employee had not taken the leave and, if the
22 employee asks for it, by cheque posted to an address the
23 employee nominates; or

24 (c) if the employer and the employee agree—in another way.

25 Maximum penalty: 50 penalty units.

26 (1A) An offence against this section is a strict liability offence.

[1.4] Section 8

renumber subsections when Act next republished under Legislation Act

[1.5] Section 12

substitute

12 Long service leave records

- (1) An employer commits an offence if the employer does not, for each employee, keep a record of—
- (a) the name, occupation and classification of the employee; and
 - (b) whether the employee is full-time, part-time or casual; and
 - (c) the employee's ordinary remuneration, including the base rate of pay and any loading payable to the employee, and the purpose of the loading; and
 - (d) the number of hours the employee works each week; and
 - (e) the date when the employee starts as an employee; and
 - (f) any annual leave the employee takes; and
 - (g) the employee's entitlement to long service leave; and
 - (h) long service leave granted, or payment instead of leave made, to the employee; and
 - (i) if the person ceases to be employed by the employer—the date when, and reason, the employee ceases to be employed; and
 - (j) the employee's date of birth; and
 - (k) if overtime may be paid to the employee under an award or agreement—
 - (i) the number of hours the employee works each day; and
 - (ii) when the employee starts and stops work; and

- 1 (1) the name of each award or agreement under which the
2 employee has entitlements.
3 Maximum penalty: 20 penalty units.
- 4 (2) An employer must keep a record made under subsection (1) for an
5 employee—
6 (a) if the employee's service ends on the employee's death—for
7 7 years after the day all amounts owing to the employee's legal
8 personal representative are paid; and
9 (b) in any other case—for 7 years after the day the employee's
10 service ends.
11 Maximum penalty: 20 penalty units.
- 12 (3) An employer commits an offence if—
13 (a) an authorised officer asks to inspect a record kept for this
14 section; and
15 (b) the employer does not make the record available for inspection
16 by the authorised officer at the employer's usual place of
17 business during hours when the employer's business is
18 normally conducted at the place.
19 Maximum penalty: 50 penalty units.
- 20 (4) An offence against this section is a strict liability offence.

21 **[1.6] Section 13B**

22 *substitute*

23 **13B Identity cards**

- 24 (1) The chief executive must give an authorised officer an identity card
25 stating the person's name and position.
- 26 (2) The identity card must show—
27 (a) a recent photograph of the person; and

- 1 (b) the card's date of issue and expiry; and
2 (c) anything else prescribed by regulation.
- 3 (3) A person commits an offence if—
4 (a) the person stops being an authorised officer; and
5 (b) the person does not return the person's identity card to the
6 chief executive as soon as practicable but no later than 7 days
7 after the day the person stops being an authorised officer.
- 8 Maximum penalty: 1 penalty unit.
- 9 (4) An offence against this section is a strict liability offence.
- 10 (5) Subsection (2) applies only in relation to a card given by the chief
11 executive after the commencement of this section.
- 12 (6) Subsection (5) is declared to be a law to which the Legislation Act,
13 section 88 (Repeal does not end effect of transitional laws etc)
14 applies.
- 15 (7) Subsections (5) and (6) and this subsection expire on the day this
16 section commences.

17 **[1.7] Section 13E**

18 *substitute*

19 **13E Notice to comply with Act**

- 20 (1) An authorised officer may, by written notice, require an employer to
21 comply with this Act within 28 days after the day the employer
22 receives the notice.
- 23 (2) A person must comply with a requirement made of the person by an
24 authorised officer under subsection (1).
- 25 Maximum penalty: 50 penalty units.
- 26 (3) An offence against this section is a strict liability offence.

Schedule 1 Criminal Code harmonisation amendments

Amendment [1.8]

1 **[1.8] Section 13H**

2 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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