



Australian Capital Territory

# **Long Service Leave Act 1976**

**A1976-27**

**Republication No 22**

**Effective: 21 September 2011 – 21 September 2012**

Republication date: 21 September 2011

Last amendment made by A2011-28

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Long Service Leave Act 1976* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 21 September 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 21 September 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Long Service Leave Act 1976

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Australian Capital Territory

# Long Service Leave Act 1976

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An Act relating to long service leave

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## Part 1 Preliminary

### 1 Name of Act

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

### 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.

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

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

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

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

*Note 2 Penalty units*

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

## 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—
  - (a) was registered under the LSL (BCI) Act; and
  - (b) has elected under that Act to take long service benefits under that Act for a period stated by the employee.
- (2) The employee's election does not prevent the employee from receiving benefits under this Act.
- (3) However, the employee is not entitled to a benefit under this Act for a period for which the employee has received a benefit under the LSL (BCI) Act.
- (4) In this section:

*LSL (BCI) Act* means the *Long Service Leave (Building and Construction Industry) Act 1981*.

### 2E Benefits under this Act and LSL (CCI) Act

- (1) This section applies to an employee who—
  - (a) was registered under the LSL (CCI) Act; and
  - (b) has elected under that Act to take long service benefits under that Act for a period stated by the employee.
- (2) The employee's election does not prevent the employee from receiving benefits under this Act.

(3) However, the employee is not entitled to a benefit under this Act for a period for which the employee has received a benefit under the LSL (CCI) Act.

(4) In this section:

*LSL (CCI) Act* means the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

## **2EA Benefits under this Act and LSL (PS) Act**

(1) This section applies to an employee who—

(a) is registered under the LSL (PS) Act; and

(b) has elected under that Act to take long service leave benefits under that Act for a period stated by the employee.

(2) The employee's election does not prevent the employee from receiving benefits under this Act.

(3) However, the employee is not entitled to a benefit under this Act for a period for which the employee received a benefit under the LSL (PS) Act.

(4) In this section:

*LSL (PS) Act* means the *Long Service Leave (Portable Schemes) Act 2009*.

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

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

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

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

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

- (2) In this section:

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

## 2G Periods of service

- (1) In this Act:

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

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

- (a) an interruption caused by an industrial dispute if the employee returns to the service of the employer in accordance with the terms of settlement of the dispute;
- (b) a period when an employee is stood down by his or her employer because of slackness of trade if the employee is re-employed by the employer within 6 months after the day the employee is stood down;
- (c) a period, other than a period mentioned in the dictionary, definition of *continuous service*, paragraph (a) or (b), when the employee is absent with the employer's leave;

- (d) a period when the employee is absent because of injury arising out of or in the course of the employment;
  - (e) any other interruption, including ending of service by the employer (other than with the intention of avoiding the granting of long service leave), if the employee returns to the employer's service within 2 months after the day the service is interrupted;
  - (f) service by the employee as a member of the Defence Force, other than as a member rendering continuous full-time service;
  - (g) a period of service when the employee is temporarily outside the ACT if the service would be continuous service if the employee were inside the ACT.
- (3) Also, an interruption of an employee's service of longer than 2 months does not break the continuity of service if the interruption is caused by the seasonal nature of the work.
- (4) For subsection (2) (f), the service by the employee as a member of the Defence Force is taken to be service with the person by whom the employee was employed immediately before the employee began to serve as a member of the Defence Force.
- (5) To remove any doubt, the period of the interruption under subsection (2) or (3) (other than a period mentioned in subsection (2) (f) or (g)) must not be taken into account in working out the total period of service.

**Example**

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

not break continuity of service. Her 10 years long service leave falls due on 1 October 2002.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **3 Entitlement to long service leave**

- (1) An employee who has completed 7 years service with a single employer is entitled to long service leave for the period of the service.
- (2) An employee is entitled to long service leave for each year of service completed by the employee after the end of the 7th year of service.
- (3) An employee's entitlement to long service leave for a period of service arises at the end of the period.

### **4 Amount of long service leave**

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

### **6 Grant of leave**

- (1) An employer commits an offence if—
  - (a) an employee of the employer becomes entitled to 4 weeks or more of long service leave; and
  - (b) the employer does not grant the leave—
    - (i) as soon as practicable, having regard to the needs of the employer's business, after the employee becomes entitled to the leave; or

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply if the employee agrees otherwise.
- (4) An offence against this section is a strict liability offence.

## **7 Payment for leave**

- (1) Payment for long service leave shall be made at the rate of an amount equivalent to the ordinary remuneration the employee would have received in respect of the period of leave if he or she had not taken the leave.
- (2) In the case of an employee who is a part-time employee or casual employee, the ordinary remuneration shall be calculated by multiplying the average number of hours worked each week by the employee during the period of 12 months immediately preceding the day on which the employee became entitled to the leave by the ordinary remuneration of the employee on that day.
- (3) If, within the period of 2 years immediately before the date on which an employee becomes entitled to long service leave in respect of a period of service, the employee ceases to be employed full time and is employed part time or as a casual employee, the ordinary remuneration for long service leave shall be calculated by dividing by 5 the total amount of salary or wages paid to the employee in the period of 5 years ending on his or her becoming so entitled.

**8            Manner of payment for leave**

- (1) An employer commits an offence if the employer does not pay an employee for long service leave—
- (a) in advance for the whole period of the long service leave; or
  - (b) at the same times as the employer would have paid the employee if the employee had not taken the leave and, if the employee asks for it, by cheque posted to an address the employee nominates; or
  - (c) if the employer and the employee agree—in another way.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) If, after payment in respect of long service leave is made in accordance with subsection (1), the amount of ordinary remuneration payable under an award or agreement to the employee increases, payment of that increase shall—
- (a) if payment was made under subsection (1) (a)—be made to the employee as soon as practicable on completion of that leave; or
  - (b) if payment was made under subsection (1) (b)—be made to the employee in accordance with that paragraph; or
  - (c) if payment was made under subsection (1) (c)—be made in such manner as is agreed by the employer and the employee, or in the absence of such agreement, as soon as practicable on completion of that leave.
- (4) Payment in lieu of long service leave shall be made—
- (a) to the employee as soon as practicable after termination of his or her employment; or

- (b) in the case of a deceased employee, to his or her legal personal representative as soon as practicable after the death of the employee but in any case not later than 12 months after his or her death.

## **9 Public holidays not to count as leave**

- (1) This section applies if a public holiday or an award holiday falls during a period of long service leave taken by an employee.
- (2) The period of long service leave is increased by 1 day for each such holiday.
- (3) In this section:

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

## **10 Service not affected by transmission of business**

Where, before or after the date of commencement of this Act, a business is transmitted from 1 employer to another and a person who was, immediately before the transmission, an employee of the first employer becomes, immediately after the transmission, an employee of the second employer—

- (a) the period of service of the employee shall be deemed not to have been interrupted; and
- (b) the period of service of the employee with the first employer shall be deemed to be service with the second employer.

## 10A Continuity of service in certain cases

- (1) Where—
  - (a) a contract for the supply of services by 1 party to the contract (the *first contractor*) on behalf of the other party to the contract (the *principal*) has been discharged; and
  - (b) the principal enters into another contract with a person other than the first contractor for the supply of those services on its behalf by that other person (the *second contractor*); and
  - (c) that other contract imposes an obligation on the second contractor to the effect that, so far as practicable, the second contractor shall employ, in supplying those services, persons whose employment with the first contractor ceased because of the discharge of the firstmentioned contract; and
  - (d) under that obligation the second contractor employs such a former employee of the first contractor; andthis section applies to that former employee.
- (2) Where this section applies to a person, the aggregate of the periods of service by the person for the first contractor and the second contractor shall, for this Act, be taken to be 1 period of service for the second contractor.

## 11 Service with associated companies

Where, over a continuous period, an employee has been employed by 2 or more companies each of which is an associated company, the employee is entitled to long service leave as if he or she had, during the whole of the period of service, been employed by the company by which he or she is employed at the date at which his or her long service leave accrues.

**11A Pay in lieu of long service leave**

- (1) For this section, the long service leave credit of a person is the amount of long service leave that has accrued to the person less the amount of long service leave granted to the person.
- (2) Where—
  - (a) a person's employment ceases for any reason; and
  - (b) the person had a long service leave credit immediately before the employment ceased;the employer shall pay the amount ascertained in accordance with subsection (3)—
  - (c) to the person; or
  - (d) if the person is dead—to the legal personal representative of the deceased person.
- (3) The amount payable is an amount that is equal to the amount of ordinary remuneration that, but for the cessation of employment, would have been payable by the employer under section 7 to the person for a period of service equal to the period of the person's long service leave credit immediately before the cessation of employment.

**11C Pro rata long service leave entitlement**

- (1) Where—
  - (a) a person's employment is terminated—
    - (i) by the person because of illness or incapacity or a domestic or other pressing necessity of such a nature to justify the termination; or
    - (ii) by the person upon or after attaining the minimum retiring age; or
    - (iii) by the death of the person; or

- (iv) by the employer for a reason other than the person's serious and wilful misconduct; and
  - (b) the person had completed a period of service in that employment of at least 5 years but less than 7 years;
- the employer shall pay the amount ascertained in accordance with subsection (2)—
- (c) to the person; or
  - (d) if the person is dead—to the legal personal representative of the deceased person.
- (2) The amount payable is an amount that is equal to the amount of ordinary remuneration that, but for the cessation of employment, would have been payable by the employer to the person for a period of service equal to the period that bears to 2 months the same proportion as the number of years or months of service completed by the person bears to 10 years.
- (3) In this section:
- minimum retiring age*, in relation to a person, means—
- (a) if a minimum retiring age applies to the person under an award or agreement—the age fixed by the award or agreement; and
  - (b) in any other case—the age of 65 years.

## 11D Calculation of ordinary remuneration

For section 11A, 11B or 11C, the amount of ordinary remuneration that, but for the cessation of employment by a person, would have been payable by the employer to the person for a period of service referred to in that section shall be calculated—

- (a) at the rate at which ordinary remuneration was payable to the person immediately before the cessation of employment; and

- (b) if the person was a part-time employee or casual employee immediately before the cessation of employment—on the basis that during that period of service the person would have been employed for the number of hours per week that is equal to the average number of hours per week for which the employee was employed during the period of 12 months immediately before the cessation of employment.

## 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) the name of each award or agreement under which the employee has entitlements.

Maximum penalty: 20 penalty units.

(2) An employer must keep a record made under subsection (1) for an employee—

(a) if the employee's service ends on the employee's death—for 7 years after the day all amounts owing to the employee's legal personal representative are paid; and

(b) in any other case—for 7 years after the day the employee's service ends.

Maximum penalty: 20 penalty units.

(3) An employer commits an offence if—

(a) an authorised officer asks to inspect a record kept for this section; and

(b) the employer does not make the record available for inspection by the authorised officer at the employer's usual place of business during hours when the employer's business is normally conducted at the place.

Maximum penalty: 50 penalty units.

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

## Part 3 Administration and enforcement

### 13 Registrar of long service leave

- (1) The director-general must appoint a public servant as the registrar of long service leave.

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

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

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

- (a) the functions directed by the Minister; and
- (b) any other function given to the registrar under this Act.

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

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

### 13A Appointment of authorised officers

The director-general may appoint a public servant to be an authorised officer for this Act.

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

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

### 13B Identity cards

- (1) The director-general must give an authorised officer an identity card stating the person's name and position.

- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised officer; and
  - (b) the person does not return the person's identity card to the director-general as soon as practicable but no later than 7 days after the day the person stops being an authorised officer.

Maximum penalty: 1 penalty unit.

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

### **13C Powers of entry of authorised officers**

- (1) Subject to subsection (2), if an authorised officer has reasonable grounds for believing that it is necessary to do so for this Act an authorised officer may, at any time, enter premises of an employer and exercise the powers referred to in subsection (4).
- (2) An authorised officer shall not enter premises under subsection (1) without the consent of the employer.
- (3) An authorised officer who enters premises under subsection (1) is not authorised to remain on the premises, and a person is not required to comply with a requirement made by an authorised officer under subsection (4), if, on request by the employer, or the person in charge of the premises, the authorised officer does not produce his or her identity card.
- (4) An authorised officer who enters premises under subsection (1) may—
  - (a) require the employer to make available for inspection records required to be kept under this Act; and

- (b) make copies of, or take extracts from records referred to in paragraph (a).

### 13D Complaints

- (1) Where a written complaint is made to the registrar by an employee, the registrar shall refer the complaint to an authorised officer.

*Note* If a form is approved under s 17 (Approved forms) for a complaint, the form must be used.

- (2) Where a complaint made by an employee—

- (a) is made to an authorised officer; or
- (b) is referred to an authorised officer under subsection (1);

the authorised officer may, by notice in writing, require the complainant and the employer to whom the complaint relates, to attend a conference at a place, date and time specified in the notice to endeavour to resolve the complaint.

- (3) A conference shall be conducted in such a manner as the authorised officer thinks fit.
- (4) Except with the consent of the authorised officer—
  - (a) an individual is not entitled to be represented at a conference by another person; and
  - (b) a body of persons (whether incorporated or unincorporated) is not entitled to be represented at a conference by a person other than a member, officer or employee of the body.

- (5) In this section:

***complaint*** means a complaint by an employee concerning his or her entitlements under this Act.

**13E Notice to comply with Act**

- (1) An authorised officer may, by written notice, require an employer to comply with this Act within 28 days after the day the employer receives the notice.
- (2) A person must comply with a requirement made of the person by an authorised officer under subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

**13F Internal review by registrar**

- (1) An employer may apply to the registrar for review of a requirement made of the employer under section 13E.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the applicant's name and address; and
  - (c) set out the applicant's reasons for making the application.

*Note* If a form is approved under s 17 for the application, the form must be used.

- (3) The registrar must—
  - (a) confirm the requirement; or
  - (b) vary the requirement; or
  - (c) set aside the requirement.
- (4) If the registrar makes a decision under subsection (3), the registrar must give an internal review notice only to the applicant.

*Note* The requirements for internal review notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (5) In this section:

*internal review notice*—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

### **13G Review by ACAT**

- (1) This section applies if the registrar makes a decision under section 13F (3) in relation to an employer.
- (2) The registrar must give a reviewable decision notice only to the employer.

*Note* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (3) The employer may apply to the ACAT for review of the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

### **13J Liability**

An action or other proceeding does not lie against the registrar or an authorised officer in relation to an honest act or omission in the exercise of his or her functions under this Act.

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

### **13K Delegation by registrar**

The registrar may delegate to a person the registrar's functions under this Act, other than the registrar's powers under section 13F (Review of directions by registrar).

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

## Part 4 Miscellaneous

### 14 No contracting out

- (1) Subject to subsection (2), this Act has effect notwithstanding any award or agreement to the contrary.
- (2) Nothing in this Act affects the operation of an award or agreement to the extent that the award or agreement confers upon an employee rights that are more advantageous to the employee than the rights conferred upon the employee by this Act.

### 17 Approved forms

- (1) The registrar may approve forms for this Act.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### 18 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### 19 Transitional—Fair Work Act (Cwlth)

- (1) For the dictionary, definition of *agreement*, a reference to an enterprise agreement made under the *Fair Work Act 2009* (Cwlth) includes a reference to an agreement-based transitional instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2.

- (2) For the dictionary, definition of *award*—
- (a) a reference to a modern award made under the *Fair Work Act 2009* (Cwlth) includes a reference to an award-based transitional instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2; and
  - (b) a reference to a workplace determination made under the *Fair Work Act 2009* (Cwlth) includes a reference to a collective agreement-based transitional instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2.
- (3) This section expires 1 year after the day it commences.

## 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:

- ACAT
- director-general (see s 163)
- function
- month
- notifiable instrument (see s 10)
- public holiday
- public servant
- reviewable decision notice.

***agreement*** means an enterprise agreement made under the *Fair Work Act 2009* (Cwlth).

***approved training contract***—see the *Training and Tertiary Education Act 2003*, dictionary.

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

***authorised officer*** means a person who is an authorised officer under section 13A.

***award*** means a modern award or workplace determination made under the *Fair Work Act 2009* (Cwlth).

***casual employee*** means a person who is, from time to time offered regular and systematic employment on the basis that the offer of employment might be accepted or rejected and in circumstances where it could be expected by that person that further employment of the same type would or might be offered and accepted, but in respect of which there is no certainty about the period over which it would continue to be offered.

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***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.

***employee*** includes—

- (a) a person who is remunerated at piecework rates; and
- (b) a part-time employee; and
- (c) a casual employee.

***ordinary remuneration***, in relation to an employee, means the sum of—

- (a) the salary or wages payable to the employee; and
- (b) any allowances payable to the employee in respect of skill, qualifications, board and lodging; and
- (c) any amounts payable to the employee under a bonus, performance pay or incentive scheme, being amounts that are usually paid to the employee with his or her salary or wages; and
- (d) where the employee is provided with board and lodging by his or her employer, an amount equal to the value of that board and lodging.

***period of service***—see section 2G (Periods of service).

*salary or wages* does not include—

- (a) payments in respect of overtime; or
- (b) payments at penalty rates of pay; or
- (c) allowances which, under an award or agreement, are not to be taken into account in determining a rate of remuneration in respect of overtime.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Long Service Leave Ordinance 1976 A1976-27* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance to Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Long Service Leave Act 1976 No 27**

notified 16 June 1976

commenced 16 June 1976

as amended by

##### **Long Service Leave (Amendment) Ordinance 1978 No 20**

notified 8 August 1978

commenced 8 August 1978

##### **Long Service Leave (Amendment) Ordinance 1981 No 24**

notified 10 September 1981

commenced 10 September 1981

##### **Ordinances Revision (Companies Amendments) Ordinance 1982 No 38 sch 4**

notified 30 June 1982

commenced 1 July 1982 (s 2)

##### **Long Service Leave (Amendment) Ordinance 1987 No 73**

notified 22 December 1987

commenced 1 January 1988 (s 2)

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989  
No S164)

**Legislation after becoming Territory enactment****Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1**

notified 1 March 1993 (Gaz 1993 No S23)  
sch 1 commenced 1 March 1993

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and see Gaz 1994 No  
S269)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994  
No S293)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
sch commenced 18 December 1995 (s 2)

**Long Service Leave (Amendment) Act 1997 No 68**

notified 9 October 1997 (Gaz 1997 No S300)  
ss 1-3 commenced 9 October 1997 (s 2 (1))  
remainder commenced 17 December 1997 (s 2 (2) and Gaz 1997  
No S416)

**Long Service Leave (Cleaning, Building and Property Services)  
Act 1999 No 85 s 69**

notified 23 December 1999 (Gaz 1999 No S65)  
pt 1, pt 2 commenced 23 December 1999 (s 2 (1))  
s 69 commenced 23 June 2000 (s 2 (3))

## Endnotes

3 Legislation history

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**Legislation (Consequential Amendments) Act 2001 No 44 pt 229**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 229 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.35**

notified 5 September 2001 (Gaz 2001 No S65)  
amnds commenced 5 September 2001 (s 2 (1))

**Vocational Education and Training Act 2003 A2003-37 sch 2 pt 2.5**

notified LR 8 September 2003  
s 1, s 2 commenced 8 September 2003 (LA s 75 (1))  
sch 2 pt 2.5 commenced 1 November 2003 (s 2)

**Long Service Leave Legislation Amendment Act 2003 A2003-45 pt 2**

notified LR 2 October 2003  
s 1, s 2 commenced 2 October 2003 (LA s 75 (1))  
pt 2 commenced 3 October 2003 (s 2)

**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.52**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.52 commenced 9 April 2004 (s 2 (1))

**Long Service Leave Amendment Act 2005 A2005-22**

notified LR 12 May 2005  
s 1, s 2 commenced 12 May 2005 (LA s 75 (1))  
ss 3-12, sch 1 commenced 13 May 2005 (s 2 and CN2005-5)  
remainder commenced 20 May 2005 (s 2 and CN2005-7)

**Occupational Health and Safety Legislation Amendment Act 2005  
A2005-38 s 5**

notified LR 30 August 2005  
s 1, s 2 commenced 30 August 2005 (LA s 75 (1))  
s 5 commenced 31 August 2005 (s 2)

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.63**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.63 commenced 12 April 2007 (s 2 (1))

**Training and Tertiary Education Legislation Amendment Act 2007  
A2007-12 sch 1 pt 1.9**

notified LR 13 June 2007  
s 1, s 2 commenced 13 June 2007 (LA s 75 (1))  
sch 1 pt 1.9 commenced 1 July 2007 (s 2 and CN2007-3)

**ACT Civil and Administrative Tribunal Legislation Amendment  
Act 2008 (No 2) A2008-37 sch 1 pt 1.71**

notified LR 4 September 2008  
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
sch 1 pt 1.71 commenced 2 February 2009 (s 2 (1) and see ACT Civil  
and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Long Service Leave Legislation Amendment Act 2008 A2008-43**

notified LR 9 September 2008  
s 1, s 2 commenced 9 September 2008 (LA s 75 (1))  
remainder commenced 10 September 2008 (s 2)

**Long Service Leave (Portable Schemes) Act 2009 A2009-25 sch 4  
pt 4.2**

notified LR 8 September 2009  
s 1, s 2 commenced 8 September 2009 (LA s 75 (1))  
sch 4 pt 4.2 commenced 1 January 2010 (s 2)

**Administrative (One ACT Public Service Miscellaneous Amendments)  
Act 2011 A2011-22 sch 1 pt 1.96**

notified LR 30 June 2011  
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
sch 1 pt 1.96 commenced 1 July 2011 (s 2 (1))

**Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.25**

notified LR 31 August 2011  
s 1, s 2 commenced 31 August 2011 (LA s 75 (1))  
sch 3 pt 3.25 commenced 21 September 2011 (s 2 (1))

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Preliminary

pt 1 hdg ins A2005-22 s 4

#### Name of Act

s 1 sub A2005-22 s 4

#### Dictionary

s 2 am 1981 No 24 s 2; 1987 No 73 s 4; 1997 No 68 s 4; 1999 No 85 s 69; ss renum R6 LA  
defs reloc to dict A2005-22 s 6  
s 2 remainder om A2005-22 s 7  
pres s 2 ins A2005-22 s 7  
def **approved training agreement** ins 1997 No 68 s 4  
om A2003-37 amdt 2.10  
def **associated company** am 1982 No 38 sch 4; 1995 No 46 sch; 1997 No 68 s 4  
om A2005-22 s 5  
def **award holiday** om A2005-22 s 5  
def **continuous service** am 1997 No 68 s 4; A2003-37 amdt 2.12  
om A2005-22 s 5  
def **minimum retiring age** am 1987 No 73 s 4  
om A2005-22 s 5  
def **training agreement** ins 1997 No 68 s 4  
om A2003-37 amdt 2.14

#### Notes

s 2A ins A2005-22 s 7

#### Offences against Act—application of Criminal Code etc

s 2B ins A2005-22 amdt 1.1

#### Important concepts

pt 2 hdg ins A2005-22 s 7

#### Commission recipients may be employees

s 2C ins A2005-22 s 7

#### Benefits under this Act and LSL (BCI) Act

s 2D ins A2005-22 s 7  
am A2008-43 s 4; A2009-25 amdt 4.3

#### Benefits under this Act and LSL (CCI) Act

s 2E ins A2005-22 s 7  
am A2008-43 s 5; A2009-25 amdt 4.4

#### Benefits under this Act and LSL (PS) Act

s 2EA ins A2009-25 amdt 4.5

**Working out remuneration—employee also receives commission**

s 2F ins A2005-22 s 7

**Periods of service**

s 2G ins A2005-22 s 7  
am A2005-38 s 5

**Entitlement to long service leave**

s 3 sub 1987 No 73 s 5  
am 1997 No 68 s 5  
sub A2005-22 s 8  
am A2008-43 s 6

**Amount of long service leave**

s 4 sub 1987 No 73 s 5; A2005-22 s 8

**Entitlement to payment in lieu of payment**

s 5 am 1978 No 20  
om 1987 No 73 s 5

**Grant of leave**

s 6 am 1978 No 20; 1994 No 81 sch; 1997 No 68 s 6  
sub A2005-22 amdt 1.2  
am A2008-43 s 7, s 8

**Payment for leave**

s 7 am 1997 No 68 s 7

**Manner of payment for leave**

s 8 am 1978 No 20; 1994 No 81 sch; 1997 No 68 s 8; ss renum  
R6 LA; A2005-22 amdt 1.3; ss renum R10 LA (see A2005-22  
amdt 1.4)

**Public holidays not to count as leave**

s 9 sub A2003-45 s 4  
am A2011-28 amdt 3.165

**Continuity of service in certain cases**

s 10A ins 1987 No 73 s 6

**Pay in lieu of long service leave**

s 11A ins 1987 No 73 s 7  
am 1997 No 68 s 9; A2008-43 s 9

**Pay for ineligible service after 7 years**

s 11B hdg sub A2005-22 s 9  
s 11B ins 1987 No 73 s 7  
am 1997 No 68 s 10  
om A2008-43 s 10

## Endnotes

4 Amendment history

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### **Pro rata long service leave entitlement**

s 11C ins 1987 No 73 s 7  
am 1997 No 68 s 11; A2003-45 s 5; A2005-22 s 10; A2011-28  
amdt 3.166

### **Calculation of ordinary remuneration**

s 11D ins 1987 No 73 s 7  
am 1997 No 68 s 12

### **Long service leave records**

s 12 am 1978 No 20; 1994 No 81 sch; 1997 No 68 s 13; pars  
renum R6 LA  
sub A2005-22 amdt 1.5

### **Administration and enforcement**

pt 3 hdg ins A2005-22 s 11

### **Registrar of long service leave**

s 13 sub 1994 No 97 sch pt 1; 1997 No 68 s 13  
am 2001 No 44 amdt 1.2680, amdt 1.2681  
sub A2005-22 s 11  
(3)-(5) exp 13 May 2006 (s 13 (5))  
am A2011-22 amdt 1.296

### **Appointment of authorised officers**

s 13A ins 1997 No 68 s 14  
sub A2005-22 s 11  
(2)-(4) exp 13 May 2006 (s 13A (4))  
am A2011-22 amdt 1.296

### **Identity cards**

s 13B ins 1997 No 68 s 14  
sub A2005-22 amdt 1.6  
(5)-(7) exp 13 May 2005 (s 13B (7))  
am A2011-22 amdt 1.296

### **Powers of entry of authorised officers**

s 13C ins 1997 No 68 s 14

### **Complaints**

s 13D ins 1997 No 68 s 14  
am 2001 No 44 amdts 1.2682-1.2685; A2007-3 amdt 3.350

### **Notice to comply with Act**

s 13E ins 1997 No 68 s 14  
sub A2005-22 amdt 1.7

### **Internal review by registrar**

s 13F ins 1997 No 68 s 14  
sub A2008-37 amdt 1.308

**Review by ACAT**

s 13G ins 1997 No 68 s 14  
sub A2008-37 amdt 1.308

**Failing to comply with requirement of authorised officer**

s 13H hdg sub A2004-15 amdt 2.113  
s 13H ins 1997 No 68 s 14  
am A2004-15 amdt 2.114, amdt 2.115  
om A2005-22 amdt 1.8

**Liability**

s 13J ins 1997 No 68 s 14  
am 2001 No 44 amdt 1.2686, amdt 1.2687  
sub A2007-3 amdt 3.351

**Delegation by registrar**

s 13K ins 1997 No 68 s 14  
sub A2007-3 amdt 3.352

**Miscellaneous**

pt 4 hdg ins A2005-22 s 12

**Offence**

s 15 om 1978 No 20

**Application of Act**

s 16 am A2005-22 s 13  
exp 20 May 2005 (s 16 (5))

**Approved forms**

s 17 om 1993 No 1 sch 1  
ins 2001 No 44 amdt 1.2688  
am A2007-3 amdt 3.353; A2011-28 amdt 3.167

**Regulation-making power**

s 18 am 1989 No 38 sch 1  
sub 1997 No 68 s 15; 2001 No 44 amdt 1.2688

**Transitional—Fair Work Act (Cwth)**

s 19 ins A2011-28 amdt 3.168  
exp 21 September 2012 (s 19 (3))

**Dictionary**

dict ins A2005-22 s 14  
am A2008-37 amdt 1.309; A2011-22 amdt 1.297; A2011-28  
amdt 3.169  
def **agreement** am 1997 No 68 s 4  
reloc from s 2 A2005-22 s 6  
sub A2011-28 amdt 3.170  
def **approved training contract** ins A2003-37 amdt 2.11  
reloc from s 2 A2005-22 s 6  
am A2007-12 amdt 1.14

## Endnotes

### 4 Amendment history

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- def **associated company** ins A2005-22 s 14
- def **authorised officer** ins 1997 No 68 s 4  
reloc from s 2 A2005-22 s 6
- def **award** am 1997 No 68 s 4  
sub 2001 No 56 amdt 3.445  
reloc from s 2 A2005-22 s 6  
sub A2011-28 amdt 3.171
- def **award holiday** ins A2005-22 s 14  
om A2011-28 amdt 3.172
- def **casual employee** ins 1997 No 68 s 4  
reloc from s 2 A2005-22 s 6
- def **continuous service** ins A2005-22 s 14
- def **determination** sub 1989 No 38 sch 1  
reloc from s 2 A2005-22 s 6  
om A2011-28 amdt 3.173
- def **employee** sub 1981 No 24 s 2I; 1997 No 68 s 4  
reloc from s 2 A2005-22 s 6
- def **minimum retiring age** ins A2005-22 s 14  
om A2011-28 amdt 3.174
- def **ordinary remuneration** am 1997 No 68 s 4  
reloc from s 2 A2005-22 s 6
- def **period of service** ins A2005-22 s 14
- def **salary or wages** reloc from s 2 A2005-22 s 6
- def **trainee** ins 1997 No 68 s 4  
am A2003-37 amdt 2.13  
reloc from s 2 A2005-22 s 6  
om A2011-28 amdt 3.175

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	ord 1989 No 38	31 May 1991
2	Act 1993 No 1	31 August 1993
3	Act 1994 No 97	31 January 1995
4	Act 1995 No 46	30 November 1996
5	Act 1997 No 68	31 December 1997
6*	A2001-56	23 January 2002
7	A2003-45	3 October 2003
8	A2003-45	1 November 2003
9	A2004-15	9 April 2004
10 (RI) †	A2005-22	18 May 2005
11 (RI) †	A2005-22	19 May 2005
12	A2005-22	20 May 2005
13	A2005-22	21 May 2005
14*	A2005-38	31 August 2005
15	A2005-38	14 May 2006
16	A2007-3	12 April 2007
17	A2007-12	1 July 2007
18	A2008-43	10 September 2008
19*	A2008-43	2 February 2009
20	A2009-25	1 January 2010
21	A2011-22	1 July 2011

† includes republication correction

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