

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations)

**Long Service Leave (Amendment)
Bill 1997**

A BILL

FOR

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

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

Short title

- 5 1. This Act may be cited as the *Long Service Leave (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

87053 (1996/70) (T53/1997)

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

5 3. In this Act, “Principal Act” means the *Long Service Leave Act 1976*.¹

Interpretation

4. Section 2 of the Principal Act is amended—

- (a) by omitting from the definition of “agreement” in subsection (1) “includes” and substituting “means”;
- 10 (b) by omitting from the definition of “agreement” in subsection (1) “in pursuance of the *Conciliation and Arbitration Act 1904*” and substituting “under the *Workplace Relations and Other Legislation Amendment Act 1996*”;
- (c) by omitting from the definition of “associated company” in
15 subsection (1) “corporation”;
- (d) by omitting from the definition of “award” in subsection (1) “*Conciliation and Arbitration Act 1904*” and substituting “*Workplace Relations and Other Legislation Amendment Act 1996*”;
- 20 (e) by inserting in the definition of “continuous service” in subsection (1) “, in relation to an employee,” before “includes”;
- (f) by inserting in paragraph (d) of the definition of “continuous service” in subsection (1) “, or an approved training agreement,” after “apprenticeship” (wherever occurring);
- 25 (g) by omitting the definition of “employee” in subsection (1) and substituting the following definition:
- “ ‘employee’ includes—
- (a) a person who is remunerated at piece-work rates;
- (b) a part-time employee; and
- 30 (c) a casual employee;”;
- (h) by inserting in paragraph (c) of the definition of “ordinary remuneration” in subsection (1) “, performance pay” after “bonus”;
- (j) by inserting in subsection (1) the following definitions:
- 35 “ ‘approved training agreement’ means a training agreement approved by the Vocational Education and Training

Authority under paragraph 30 (2) (a) of the *Vocational Education and Training Act 1995*;

‘authorised officer’ means a person who is an authorised officer by virtue of section 13A;

5 ‘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
10 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;

‘trainee’ means the person who is obliged under a training agreement to undertake training;

15 ‘training agreement’ means a written agreement between a trainee and his or her employer, the terms of which are in accordance with the terms determined by the Vocational Education and Training Authority under section 33 of the *Vocational Education and Training Act 1995*.’;

20 (k) by omitting from paragraph (2A) (b) “this” and substituting “that”;

(l) by omitting from subsection (2A) all the words after “employee” (second occurring) and substituting—

25 “shall be entitled to receive benefits under this Act if, had a benefit not been received by the employee under the *Long Service Leave (Building and Construction Industry) Act 1981*, the employee would have been entitled to receive benefits under this Act in respect of the same period”; and

(m) by inserting after subsection (4) the following subsection:

30 “(4A) A reference in this Act to a period of service shall be read as including a reference to a period for which an employee was temporarily employed outside the Territory.”.

Entitlement to long service leave

5. Section 3 of the Principal Act is amended by inserting in subsection (1) “with his or her employer” after “service” (first occurring).

Grant of leave

6. Section 6 of the Principal Act is amended—

(a) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

5

“Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.”; and

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(b) by omitting the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

“Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.”.

Payment for leave

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7. Section 7 of the Principal Act is amended—

(a) by inserting in subsection (2) “or casual employee” after “part-time employee”; and

(b) by adding at the end the following subsection:

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“(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.”.

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Manner of payment for leave

8. Section 8 of the Principal Act is amended—

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(a) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

“Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units”;

and

(b) by inserting after subsection (1) the following subsection:

5 “(1A) 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 paragraph (1) (a)—be made to the employee as soon as practicable on completion of that leave;

10 (b) if payment was made under paragraph (1) (b)—be made to the employee in accordance with that paragraph; or

(c) if payment was made under paragraph (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.”.

15 **Pay in lieu of long service leave**

9. Section 11A of the Principal Act is amended—

(a) by inserting in subsection (3) “under section 7” after “employer”; and

(b) by adding at the end the following subsection:

20 “(4) For the purposes of subsection (1), long service leave is to be taken to have accrued in respect of any uncompleted period of 5 years service that commenced immediately after the expiration of the last period of service in respect of which long service leave accrued to the person in the same proportion as the number of
25 years or months of service completed bears to 5 years.”.

Pay for ineligible service after 10 years

10. Section 11B of the Principal Act is amended by inserting in subsection (3) “or months” after “years”.

Pro rata long service leave entitlement

30 11. Section 11C of the Principal Act is amended—

(a) by inserting in subparagraph (1) (a) (i) “of such a nature to justify the termination” after “necessity”; and

(b) by inserting in subsection (2) “or months” after “years” (first occurring).

Calculation of ordinary remuneration

12. Section 11D of the Principal Act is amended by inserting in paragraph (b) “or casual employee” after “part-time employee”.

Long service leave records

5 13. Section 12 of the Principal Act is amended—

(a) by omitting paragraphs (a) to (g) (inclusive) and substituting the following paragraphs:

- “(a) the name, occupation and classification of the employee;
- (b) whether the employee is full-time, part-time or casual;
- 10 (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;
- (d) the number of hours worked each week by the employee;
- (e) the date on which the employee commenced service;
- 15 (f) the period of any annual leave taken by the employee;
- (g) the employee’s entitlement to long service leave;
- (h) long service leave granted, or payment in lieu of leave made, to the employee;
- 20 (j) where the person has ceased to be employed by the employer—the date on which, and manner in which, he or she so ceased to be employed;
- (k) the date of birth of the employee as provided by the employee;
- 25 (m) if overtime may be paid under the award to the employee—
 - (i) the number of hours worked by the employee during each day; and
 - (ii) when the employee started and ceased work;
- 30 (n) the name of each award or agreement under which the employee has entitlements.”;

- (b) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

“Penalty:

(a) if the offender is a natural person—20 penalty units;

5 (b) if the offender is a body corporate—100 penalty units.”;

- (c) by omitting from paragraphs (2) (a) and (b) “6” and substituting “7”;

- (d) by omitting the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

10 “Penalty:

(a) if the offender is a natural person—20 penalty units;

(b) if the offender is a body corporate—100 penalty units.”;

- (e) by omitting from subsection (3) “inspector” (wherever occurring) and substituting “authorised officer”; and

- 15 (f) by omitting the penalty provision at the foot of subsection (3) and substituting the following penalty provision:

“Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.”.

20 **Substitution**

14. Section 13 of the Principal Act is repealed and the following sections are substituted:

Registrar of Long Service Leave

“13. (1) There shall be a Registrar of Long Service Leave.

25 “(2) In addition to performing the functions of the Registrar under this Act and the regulations, the Registrar shall perform such other functions as the Minister directs.

30 “(3) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Registrar of Long Service Leave.

“(4) The Registrar shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (3).

Authorised officers

“13A. (1) There shall be 1 or more authorised officers for the purposes of this Act.

5 “(2) The Chief Executive may create and maintain 1 or more offices in the Public Service the duties of which include performing the functions of an authorised officer.

“(3) The following persons shall be authorised officers:

- (a) any public servant for the time being performing the duties of a Public Service office referred to in subsection (2);
- 10 (b) any other person (including an officer of the Australian Public Service constituted under the *Public Service Act 1922* of the Commonwealth) appointed, in writing, by the Chief Executive for the purpose.

Identity cards

15 “13B. (1) The Chief Executive shall issue to the Registrar an identity card that specifies the Registrar’s name and office, and on which appears a recent photograph of the Registrar.

20 “(2) The Chief Executive shall issue to a delegate of the Registrar with any delegated powers of an authorised officer an identity card that specifies the delegate’s name and delegated office, and on which appears a recent photograph of the delegate.

“(3) The Chief Executive shall issue to an authorised officer an identity card that specifies the authorised officer’s name and office, and on which appears a recent photograph of the authorised officer.

25 “(4) On ceasing—

- (a) to occupy, or to act in, the office of the Registrar;
- (b) to be a delegate of the Registrar with any delegated powers of an authorised officer; or
- (c) to occupy, or to act in, an office of authorised officer;

30 a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

Powers of entry of authorised officers

35 “13C. (1) Subject to subsection (2), if an authorised officer has reasonable grounds for believing that it is necessary to do so for the

purposes of 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.

5 “(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
10 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
- 15 (b) make copies of, or take extracts from records referred to in paragraph (a).

Complaints

“13D. (1) Where a complaint is made to the Registrar by an employee, the Registrar shall refer the complaint to an authorised officer.

20 “(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
25 place, date and time specified in the notice to endeavour to resolve the complaint.

“(3) A complaint shall be in writing in accordance with a form approved by the Registrar.

30 “(4) A conference shall be conducted in such a manner as the authorised officer thinks fit.

“(5) Except with the consent of the authorised officer—

- (a) a natural person is not entitled to be represented at a conference by another person; and
- 35 (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.

“(6) In this section—

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

Notice to comply with Act

5 “13E. An authorised officer may, if satisfied having regard to the relevant circumstances of a particular case that it is necessary to do so, by notice in writing, require an employer, within 28 days after the date of the notice, to comply with the Act.

Review of directions by Registrar

10 “13F. (1) An employer may apply to the Registrar for a review of a requirement made of him or her under section 13E.

“(2) An application shall be in writing.

“(3) The Registrar may uphold, revoke or vary the terms of, the requirement.

15 “(4) Where the Registrar makes a decision under subsection (3), the Registrar shall give notice in writing of his or her decision to the applicant.

Review of decisions

“13G. (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Registrar under section 13E.

20 “(2) A notice under subsection 13F (4) shall be in accordance with the requirements of the Code of Practice in force under subsection 25 (1) of the *Administrative Appeals Tribunal Act 1989*.

Obstructing etc. authorised officers

25 “13H. (1) A person shall not, without reasonable excuse, obstruct or hinder an authorised officer in the exercise of his or her powers under this Act.

Penalty:

- 30 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(2) A person shall not, without reasonable excuse, contravene a requirement made under section 13E.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- 5 (b) if the offender is a body corporate—250 penalty units.

Liability

10 “13J. An action or other proceeding, civil or criminal, does not lie against the Registrar or an authorised officer for or in relation to any act done, or omission made, in good faith in connection with his or her powers under this Act or the regulations.

Delegation by Registrar

“13K. The Registrar may delegate to any person any of the Registrar’s powers under this Act or the regulations, other than the Registrar’s powers under section 13F.”.

15 **Substitution**

15. Section 18 of the Principal Act is repealed and the following section substituted:

Regulations

20 “18. The Executive may make regulations for the purposes of this Act.”.

NOTE

Principal Act

1. Reprinted as at 30 November 1996