

NORTHERN TERRITORY OF AUSTRALIA

LONG SERVICE LEAVE ACT

As in force at 30 March 1998

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 30 March 1998

LONG SERVICE LEAVE ACT

An Act to provide for the grant to certain employees of long service leave, and for other purposes

1 Short title

This Act may be cited as the *Long Service Leave Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Repeal

The *Long Service Leave Ordinance 1965* (No. 67 of 1965), the *Long Service Leave Ordinance 1970* (No. 18 of 1970) and the *Long Service Leave Ordinance 1974* (No. 52 of 1974) are repealed.

4 Savings

- (1) The repeal of the Ordinances specified in section 3 does not affect a grant under those Ordinances of long service leave for a period commencing after or extending after the commencement of this Act, and this Act applies to and in relation to any long service leave so granted that occurs after that commencement as if it had been granted under this Act.
- (2) Notwithstanding the repeal of the Ordinances specified in section 3, where an employee was, on the day before the date of commencement of this Act, entitled to a period of long service leave, the employee shall be entitled to a credit of long service leave equal to that period.

5 Transitional

- (1) This Act does not apply to and in relation to a period of employment performed before the date of commencement of this Act if, before that date, the employment of the employee was terminated otherwise than for the purpose of avoiding the grant of long service leave.

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- (2) Long service leave granted, or payment in lieu of long service leave made, before the commencement of this Act:
 - (a) shall be deemed to be leave granted, or payment made, under this Act; and
 - (b) shall be deducted from any leave or payment to which the employee would be entitled by virtue of this Act.

6 Application

- (1) Subject to this Act, where a person is or has been, on or after the commencement of this Act, employed in the Territory, this Act applies to and in relation to his employment at any time before or after the commencement of this Act.
- (2) This Act does not apply to or in relation to:
 - (a) a person in respect of whom provision for long service leave is made by another law of the Territory, or of the Commonwealth or of a State;
 - (b) a person to whom an award applies making provision for long service leave; or
 - (c) a person employed in an honorary capacity.
- (4) Nothing in this Act allows an employee to obtain credit for long service leave more than once in respect of the same period of employment.

7 Interpretation

- (1) In this Act, unless the contrary intention appears:

award means an award, order, industrial agreement or common rule declaration in force at the time of the employment of the employee under the *Conciliation and Arbitration Act 1904* of the Commonwealth.

employee means a person to whom this Act applies who has entered into or works under a contract of service or apprenticeship with an employer, whether the contract is express or implied, oral or in writing, on salary, wages or piecework rates or as a member of a butty gang, full-time or part-time, or casual, or as an outworker.

pay, in relation to an employee, means his pay, salary, wages or remuneration in respect of his employment.

public holiday means a day to be observed as a public holiday under the *Public Holidays Act*.

- (2) A reference in this Act to an employee's pay shall be read as including a reference to:
- (a) an over-award payment, industry, leading hand, skill or qualification allowance or service grant;
 - (b) any amounts payable to the employee under a bonus or incentive scheme, being amounts that are usually paid to the employee with his pay;
 - (c) if the employee is provided with free board or lodging by the employer – an amount equal to the value of that board or lodging fixed by or under the terms of his employment or, if not so fixed, \$15 per week for board or \$5 per week for lodging; and
 - (d) any allowance of a specified kind prescribed by the Regulations to be included in an employee's pay for the purposes of this Act or a provision of this Act,

but not including a reference to district allowance, site allowance, climatic allowance or any other allowance or payment in respect of overtime or penalty rates of pay.

- (3) For the purposes of this Act, the fact that:
- (a) some or all of an employee's pay consists of a share of the earnings of the employer; or
 - (b) a vehicle, vessel, machine, tool or other article for the performance of his work is obtained by the employee under a contract of hire in consideration of the payment of a fixed sum or a share of the earnings of the employer, or otherwise,

does not in itself prevent the person from being regarded as an employee.

- (4) For the purpose of calculating an employee's rate of pay where, during a year, an employee is remunerated partly by pay and partly by commission, the total of the pay and the commission payable to the employee during the year shall be added together.
- (5) Where, by a provision of a law that governs an award applying to an employee in the Territory, a person is deemed, for the purposes of that law, to be the employer of another person, the person so deemed to be an employer shall, for the purposes of this Act, be deemed to be an employer of that other person.

(6) Nothing in this Act:

- (a) entitles an employee to be paid, or requires an employer to pay, more than one payment of the amount, or part of the amount, payable under section 11 for or in lieu of the entitlement of the employee to long service leave; or
- (b) entitles an employee to take, or requires an employer to grant, a period of long service leave of more than 1.3 weeks for each completed year of continuous service.

8 Long service leave entitlement

- (1) Subject to this Act, where an employee has been employed by an employer for not less than 10 years continuous service, the employee is entitled to long service leave, on pay calculated under section 11, for a period of 1.3 weeks for each completed year of continuous service with the employer.
- (2) Where an employee has been employed by an employer for a period of 10 years of continuous service, the employee is entitled to take long service leave for a period equal to 1.3 weeks for each completed year of that 10 years continuous service.
- (3) Where an employee has completed a period of 10 years of continuous service with an employer referred to in subsection (1), the employee becomes entitled to take long service leave on the completion of any each subsequent period of 5 years continuous service with that employer for a period equal to 1.3 weeks for each completed year of that 5 years continuous service.
- (4) Subject to subsection (5) and section 13, an employee who is entitled to long service leave under this Act shall not be entitled to benefits in the nature of long service leave in respect of his or her employment with his or her employer otherwise than under this Act.
- (5) The Minister may approve, subject to such conditions as he or she thinks fit, an agreement between an employee and his or her employer in respect of the entitlement of the employee to benefits in the nature of long service leave in respect of the employee's employment with that employer where the Minister is satisfied that those benefits are not less favourable than those provided under this Act.
- (5A) The Minister may revoke, subject to such conditions as he or she thinks fit, in whole or in part, an approval under subsection (5) of an agreement referred to in that subsection.
- (6) Subject to subsections (5) and (7) and section 13, where an employee is entitled to long service leave under this Act, an

agreement referred to in subsection (5) and approved under that subsection, or a scheme referred to in section 13 to which an exemption under that section relates, his or her employer shall grant and the employee shall take the long service leave to which he or she is entitled:

- (a) as soon as practicable after the leave has accrued, having regard to the needs of the employer's business, or commencing on and from a date that is agreed upon between the employer and employee; and
 - (b) in one continuous period or, where the employer and employee agree, in separate periods not exceeding 3, of not less than 4 weeks each.
- (7) Unless the employee otherwise agrees, an employer shall give to an employee not less than 2 months notice of the date from which it is proposed that the employee's long service leave shall be granted and taken.
- (8) Where an employee has been granted a period of long service leave in accordance with this section, the amount of long service leave due to that employee is reduced by the period of the leave so granted.

9 Public holidays

Where a public holiday occurs during a period of long service leave granted under this Act, the public holiday shall be deemed to be part of the long service leave and the period of leave shall not be increased because of the holiday.

10 Entitlement for payment for long service leave credit

- (1) Subject to subsection (1A), where an employee who is entitled to long service leave ceases to be an employee otherwise than by death, the employer is to pay to the employee the amount payable under section 11 for a period equal to the period of his or her long service leave credit at the time he or she ceases that employment.
- (1A) Where an employee who is entitled to long service leave ceases to be an employee by reason of serious misconduct, the employer shall pay to the employee, in lieu of long service leave, an amount not less than the amount that would be payable to the employee under section 11 for his or her long service leave credit at the time he or she ceases that employment (if any) in respect of:
- (a) where the employee has completed not less than 10, but less than 15 years, of continuous service with the employer, the completed period of 10 years continuous service only; and

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- (b) where the employee has completed not less than 15 years of continuous service with the employer, completed periods of 5 years continuous service only.
- (2) Where an employee whose period of employment is less than 10 years but not less than 7 years ceases to be an employee of that employer, otherwise than by death:
- (a) on or subsequent to his attaining the age at which he may retire;
 - (b) on the termination of his employment by his employer for a reason other than serious misconduct; or
 - (c) on account of his illness, incapacity or domestic or other pressing necessity of such a nature as to justify his so ceasing to be an employee,

the employer shall pay to the employee the amount payable under section 11 for a period equal to 1.3 weeks for each completed year of service of that employment.

- (3) Where an employee dies but, if he had lived, would have been entitled to payment under subsection (1) or (2) had he otherwise ceased to be employed on the date of his death, his former employer shall, on the request of the personal representative of the employee, pay to the personal representative the amount that would have been payable to the employee under those circumstances.
- (4) Except as provided by this section, an employer shall not pay to an employee, and an employee shall not accept, any amount in lieu of long service leave to which the employee is entitled under this Act.

11 Payment for long service leave

- (1) In this section:

hours of work per week means:

- (a) the fixed number of hours per week an employee has worked for an employer during a year of continuous service with an employer; or
- (b) where an employee has not worked a fixed number of hours per week, the average number of hours per week the employee has worked for an employer during a year of continuous service with an employer,

but does not include hours of overtime worked by the employee.

rate of pay means an employee's remuneration for the hours of work per week worked by the employee calculated:

- (a) in the case of an employee who is remunerated in accordance with a rate of pay fixed by the terms of employment of the employee, that rate of pay; or
- (b) in the case of an employee:
 - (i) who is not remunerated in accordance with a rate of pay referred to in paragraph (a);
 - (ii) who is remunerated partly in accordance with a rate of pay referred to in paragraph (a) and partly in another manner; or
 - (iii) where no rate of pay is fixed by the terms of employment of the employee,

the average rate of pay paid to the employee during a year of continuous service (to be calculated by dividing the total amount of pay paid, other than any amount paid for hours of overtime worked or as district allowance, site allowance, climatic allowance or penalty rates, by the total number of hours, other than hours of overtime, worked by the employee during the year of continuous service).

- (2) Where an employee is entitled to a payment for, or in lieu of, long service leave under this Act, the amount payable to the employee is the sum of the amounts calculated under subsection (3) for each completed year of continuous service that comprises the period of service from which his or her entitlement to long service leave is derived.
- (3) An amount calculated for a completed year of continuous service under subsection (2) is to be calculated in accordance with the formula $RP \times HWW \times 1.3$, where:

RP means an employee's rate of pay payable on the day immediately preceding the day on which he or she ceases to be an employee or takes a period of long service leave, or on the day as agreed in accordance with subsection (8)(a), as the case may be.

HWW means the number of hours of work per week an employee worked for an employer during a year of the continuous service.

(4) For the purpose of giving an example of the calculation of a payment under subsection (2) in respect of 10 years of continuous service, where:

- (a) an employee works 40 hours per week during the whole of the period of 10 years of continuous service; and
- (b) the employee's rate of pay on the day immediately preceding the day on which he or she ceases to be an employee or takes a period of long service leave is \$15 per hour,

then the amount payable to the employee is \$7,800, being the sum of $\$15 \times 40 \text{ hours} \times 1.3 \text{ weeks}$ for each of the 10 years of continuous service.

(5) For the purpose of giving a further example of the calculation of a payment under subsection (2) in respect of 5 years of continuous service, where:

- (a) the employee worked:
 - (i) 40 hours per week during the first year of continuous service;
 - (ii) 40 hours per week during the second year of continuous service;
 - (iii) 30 hours per week during the third year of continuous service;
 - (iv) an average of 25 hours per week during the fourth year of continuous service; and
 - (v) an average of 20 hours per week during the fifth year of continuous service; and
- (b) the employee's rate of pay on the day immediately preceding the day on which he or she ceases to be an employee or takes a period of long service leave is \$30 per hour,

then the amount payable to the employee is \$6,045, being the sum of $(\$30 \times 40 \text{ hours} \times 1.3 \text{ weeks})$ plus $(\$30 \times 40 \text{ hours} \times 1.3 \text{ weeks})$ plus $(\$30 \times 30 \text{ hours} \times 1.3 \text{ weeks})$ plus $(\$30 \times 25 \text{ hours} \times 1.3 \text{ weeks})$ plus $(\$30 \times 20 \text{ hours} \times 1.3 \text{ weeks})$.

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- (6) Subject to subsection (8), where an employee is to take a period of long service leave, his or her employer is to pay the amount calculated under (2) to the employee in respect of the whole of the period:
- (a) on or before the last day on which the employee is required to work before he or she commences the leave; or
 - (b) on the pay day immediately before he or she commences the leave,
- as agreed between the employer and employee.
- (7) Where an employee ceases to be an employee on retirement, termination of employment, ill health, death or domestic or other pressing necessity, the employer is to pay the amount calculated under subsection (2):
- (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 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.
- (8) An employer and an employee may agree that:
- (a) where they have made an agreement under section 8(6) to postpone the grant of long service leave or a part of it, the pay payable in respect of that postponed leave is to be at the employee's rate of pay on the date of the agreement, and payment in respect of that postponed leave is to be made accordingly; or
 - (b) payment of the employee's pay in respect of long service leave he or she is to take is to be paid at a time other than a day referred to in subsection (6) and that payment be made by cheque, posted to a specified address or otherwise, and payment in respect of that leave is to be made accordingly.

12 Qualifying service

- (1) The period of qualifying service of an employee with an employer for the purposes of this Act is the period during which he served (including any period that commenced before the commencement of this Act) continuously with the employer.

(2) For the purposes of this Act, an employee shall be deemed not to break, or not to have broken, the continuity of his service by reason of his serving or having served:

- (a) on continuous full-time service in a part of the Reserve Forces or of the Citizen Forces;
- (b) in a part of those Forces for such period as is or was fixed by or in accordance with regulations under the *Defence Act 1903* of the Commonwealth, the *Naval Defence Act 1910* of the Commonwealth or the *Air Force Act 1923* of the Commonwealth, as in force at the relevant time;
- (c) on national service; or
- (d) as a member of the Civil Construction Corps established under the *National Security Act 1939* of the Commonwealth,

and the period of service of the employee referred to in paragraph (a), (b), (c) or (d), whichever is applicable, shall be deemed to be a period of employment by the employee with the employer by whom he was last employed before commencing that service.

(3) Where an employee completes an apprenticeship with an employer and, within a period of 12 months after completing that apprenticeship, the employee is re-employed by the employer, the period of that apprenticeship shall be deemed to be a period of employment by the employee with the employer.

(4) For the purposes of this Act, an employee shall be deemed not to break, or not to have broken, the continuity of his employment by reason of an interruption or determination of that employment:

- (a) brought about by the action of his employer with the intention or result of avoiding an obligation imposed on the employer by this Act;
- (b) arising directly or indirectly out of an industrial dispute where the employee returns to his employment in accordance with the terms of settlement of the dispute;
- (c) arising from the standing down of the employee by the employer for the reason of a slackness of trade;
- (d) after completing a period of apprenticeship with the employer for a period not exceeding 12 months; or

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- (e) for any other reason and the employee was re-employed by that employer within 2 months of the interruption or determination.
- (5) Where an employee is or was absent otherwise than:
- (a) on leave granted with pay by the employer; or
 - (b) by action of his employer with the intention or result of avoiding an obligation imposed on the employer by this Act,
- the period of the absence does not form part of the period of his employment with that employer for the purposes of this Act.
- (6) Where an employee is employed in a corporation and, at any time prior to his current period of employment, he has been employed in one or more related corporations and the periods for which he was so employed are continuous with one another within the meaning of this section, the sum of those periods of employment shall, subject to this Act, be included in his period of employment for the purposes of this Act.
- (7) For the purposes of subsection (6), a corporation shall be deemed to be a related corporation if the corporation is a subsidiary, holding or related corporation within the meaning of the Corporations Law.
- (8) Where:
- (a) all or part of a business, undertaking or establishment of an employer has, whether before or after the commencement of this Act, been transferred to another employer; and
 - (b) a person who, at the time of the transfer, was an employee of the first-mentioned employer and transfers his employment to that other employer,
- the period of employment with such other employer shall be deemed not to have been broken by reason of the transfer, and the period of employment with the first-mentioned employer shall be deemed to be a period of employment with the other employer.
- (9) For the purposes of subsection (8), **transfer** includes transmission, conveyance, assignment or succession, whether by agreement, under will, in pursuance of letters of administration of a deceased person's estate or by operation of law.

13 Exemptions

The Minister may, subject to such conditions as he thinks fit, by instrument in writing, exempt an employer or class of employers

from the operation of this Act or of a provision of this Act in respect of an employee, or class of employees specified by the Minister, if the Minister is satisfied that the employee or class of employees is entitled to benefits in the nature of long service leave under a scheme conducted by or on behalf of the employer or class of employers not less favourable than those provided by this Act.

14 Leave records

- (1) An employer shall, in respect of each of his or her employees, keep and maintain or cause to be kept and maintained a record showing particulars of:
 - (a) the name of the employee;
 - (b) the date on which the employee commences employment with the employer, the wages, the periods of prior qualifying service, and the salary or commission paid to such an employee;
 - (ba) the number of hours of work per week worked by the employee;
 - (c) the accrued long service leave credit of the employee;
 - (d) each period of long service leave, or payment in lieu of long service leave, made to the employee;
 - (e) each other occasion of 2 months or more on which the employee has been absent from that employment; and
 - (f) where the employee ceased to be employed by the employer – the date on which the employee ceased to be so employed.
- (2) An employer shall retain a record referred to in subsection (1):
 - (a) after the date on which the employee to whom the record relates ceased to be employed by the employer – until the expiration of 3 years; and
 - (b) in the case of an employee whose employment is terminated by death – 6 years after the date on which all moneys owing to his legal personal representative are paid.
- (3) A person shall not make a false or misleading statement in or a material omission from a record that is required to be kept under this section.

15 Investigation by authorized person

- (1) A person authorized by the Minister may:
 - (a) conduct such investigations as the authorized person thinks fit to ascertain whether provisions of this Act have been complied with; and
 - (b) for that purpose, require an employer to produce, at such reasonable time and place as the authorized person specifies, the records required to be kept under section 14.
- (2) An employer shall not fail to comply with a request given to him under subsection (1).
- (3) An authorized person shall, if requested so to do by the Minister, as soon as practicable after conducting an investigation under this section, report in writing to the Minister the findings of the investigation.

16 Other employment during long service leave

An employee shall not, during any period when he is on long service leave granted by his employer under this Act, engage in any other remunerative employment with duties of a kind performed by him in his employment from which he was granted that leave.

17 Evasion, &c, of obligations

- (1) This Act has effect notwithstanding any agreement between an employer and his employee that confers on the employee rights that are not as advantageous to the employee as the rights conferred on an employee by this Act.
- (2) An employer shall not do any act or thing for the purpose of, or that has the effect of, in any way:
 - (a) avoiding or evading an obligation imposed on the employer by this Act; or
 - (b) defeating, evading, avoiding or preventing the operation of this Act.

18 Offences

- (1) A person shall not contravene or fail to comply with a provision of this Act applicable to him.

Penalty: \$1,000 or imprisonment for 6 months.

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- (2) Where a person is found guilty of an offence against this Act, the court may, in addition to the imposition of any penalty, make such order with respect to any payment or leave due under this Act to another person in respect of whom the offence was committed as it thinks just in the matter, including an order that the person found guilty pay to such other person any sum that the court is satisfied is due from the person found guilty to that other person in connection with the employment of that other person by him.
 - (3) Where a person found guilty of an offence against this Act is a body corporate, each person who, at the time of the commission of the offence, was a director or officer of the body corporate shall also be deemed to have committed the like offence and shall be liable to the penalty provided by this Act for the offence unless the court is satisfied that the offence was committed without his knowledge or that he used all diligence to prevent the commission of the offence.
 - (4) An offence of contravening or failing to comply with section 14 is a regulatory offence.

18A Limitation of time for prosecution

Notwithstanding any other law in force in the Territory, a proceeding for an offence against this Act may be instituted within 3 years after the act or omission alleged to constitute the offence.

19 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Long Service Leave Act 1981 (Act No. 72, 1981)***

Assent date 18 September 1981
 Commenced 10 November 1981 (*Gaz S22*, 10 November 1981)

Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)

Assent date 28 November 1983
 Commenced 1 January 1984 (s 2 s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz G46*, 18 November 1983, p 11 and *Gaz G8*, 26 February 1986, p 5)

Long Service Leave Amendment Act 1984 (Act No. 33, 1984)

Assent date 20 July 1984
 Commenced 1 February 1989 (*Gaz G4*, 1 February 1989, p 2)

Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)

Assent date 30 June 1986
 Commenced 1 July 1986 (s 2)

Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)

Assent date 14 December 1990
 Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and *Gaz S76*, 21 December 1990)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

Long Service Leave Amendment Act 1997 (Act No. 25, 1997)

Assent date 2 June 1997
Commenced 1 July 1997 (*Gaz G25, 25 June 1997, p 3*)

Amending Legislation

Statute Law Revision Act 1998 (Act No. 11, 1998)

Assent date 30 March 1998
Commenced 30 March 1998

Statute Law Revision Act 1998 (Act No. 11, 1998)

Assent date 30 March 1998
Commenced 30 March 1998

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 10 *Long Service Leave Amendment Act 1997 (Act No. 25, 1997)*

4 LIST OF AMENDMENTS

s 6 amd No. 33, 1984, s 4; No. 25, 1997, s 4
s 7 amd No. 25, 1997, s 5
s 8 amd No. 33, 1984, s 5; No. 25, 1997, s 6
s 10 amd No. 33, 1984, s 6; No. 25, 1997, s 7; No. 11, 1998, s 10
s 11 amd No. 33, 1984, s 7
sub No. 25, 1997, s 8
s 12 amd No. 18, 1986, s 3; No. 59, 1990, s 4
s 14 amd No. 33, 1984, s 8; No. 25, 1997, s 9
s 18 amd No. 68, 1983, s 120; No. 17, 1996, s 6
s 18A ins No. 33, 1984, s 9