

**NORTHERN TERRITORY OF AUSTRALIA**

**PUBLIC HOLIDAYS ACT**

As in force at 27 October 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 27 October 2004

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## PUBLIC HOLIDAYS ACT

### An Act relating to public holidays

#### 1 Short title

This Act may be cited as the *Public Holidays 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The Ordinances and Act specified in Schedule 1 are repealed.

#### 4 Interpretation

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

**award** means an award, order, industrial agreement, determination or common rule declaration in force at the time of the employment of the employee under the *Workplace Relations Act 1996* of the Commonwealth.

**casual employee** means a person who has entered into an arrangement with an employer under which:

- (a) the employment is irregular and not on fixed days or at fixed times;
- (b) employment is available and the person works only when required by the employer; and
- (c) there is no continuing contract of employment with the employer requiring the person to work on a subsequent occasion at a specified time.

**employee** means a person to whom this Act applies who has entered into or works under a contract of service 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,

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full-time or part-time, or casual or as an outworker, and includes an apprentice and a person remunerated by piecework rates.

**ordinary pay**, in relation to an employee, means remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay of the employee and **ordinary rate of pay** has a corresponding meaning.

**ordinary time rate of pay** means:

- (a) in the case of an employee who is remunerated in relation to an ordinary time rate of pay fixed by the terms of employment of the employee, the time rate of pay so fixed; or
- (b) in the case of an employee:
  - (i) who is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner; or
  - (ii) where no ordinary time rate of pay is so fixed for an employee's work under the terms of the employment,

the average time rate of pay earned by the employee during the period actually worked by the employee in the service of the employer during the period of 12 months immediately preceding the date when the employee enters on leave or preceding the termination of the employment of the employee or the death of the employee, as the case may be.

**public holiday** means a day that is declared to be a public holiday under this Act.

**working day** means a day other than a public holiday or a Sunday.

- (2) 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 the employer of that other person.

## **5 Public holidays**

Subject to section 7, the days specified in Schedule 2 shall, in each year, be observed as public holidays in the Territory.

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## **6 Additional public holidays**

The Minister may, by notice in the *Gazette*, appoint a day to be a public holiday in addition to the public holidays specified in Schedule 2 to be observed as such:

- (a) in the Territory or such part or parts of the Territory as is or are specified in the notice; and
- (b) by all or such section or sections of the community of the Territory as is or are specified in the notice.

## **7 Alteration of public holidays**

The Minister may, by notice in the *Gazette*:

- (a) declare that a day in a year that would, otherwise than by virtue of this Act, be observed as a public holiday shall not be so observed as a public holiday in that year; and
- (b) appoint another day in that year to be observed as a public holiday in its stead.

## **8 Appointed public holidays**

A day appointed as a public holiday under section 6, and a day appointed as a public holiday under section 7, shall each be observed as a public holiday in accordance with the terms of the notice, as the case requires.

## **9 Notice of appointed public holidays**

A notice under section 6 or 7 shall be published in the *Gazette* not less than 28 days before the public holiday appointed by the notice.

## **10 Payments and other acts on public holidays**

When the day on which a payment, notice, act or thing should be made, given or done falls on a public holiday, it may be made, given or done on the working day next following the public holiday.

## **11 Payments for public holidays**

- (1) An employer may require an employee to work on a public holiday.
- (2) Where an employee is required to work on a public holiday but fails to attend for work as directed, the employee shall not be entitled to be paid in respect of that public holiday.
- (3) Where an employee is required to work on a public holiday and works on that day as directed and if the ordinary pay of the

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employee is less than the prescribed rate the employee shall be paid for each hour so worked at twice the ordinary time rate of pay (including any payment otherwise payable to the employee for that hour under the contract of employment) that the employee would have received if he or she had worked during his normal working hours on that day and that day had been a working day.

- (4) Where an employee is not required to work on a public holiday:
- (a) if the employee is a part-time employee who, in the normal course of employment, would have worked on that day if it had not been a public holiday – the employee shall be entitled to be absent without loss of pay;
  - (b) if the employee is a casual employee – the employee shall not be entitled to any pay on that day; and
  - (c) in the case of any other employee – the employee shall be entitled to be absent without loss of pay.
- (5) Where:
- (a) an employee is not required to work on a public holiday; and
  - (b) the employee is absent from work without reasonable cause on the working day before or the working day after the public holiday,
- the employee shall not be entitled to any pay in respect of that public holiday.
- (6) This section does not apply to and in relation to:
- (a) a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*;
  - (b) an officer or employee within the meaning of the *Public Service Act 1922* of the Commonwealth;
  - (c) an employee in the Public Service within the meaning of the *Public Service Arbitration Act 1920* of the Commonwealth; or
  - (d) an employee to whom an award applies making provision for the payment for a public holiday or for work on a public holiday.
- (7) Nothing in this section affects the application of the *Workmen's Compensation Act*.

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## **12 Exemptions**

The Minister may, subject to such conditions as he or she thinks fit, by instrument in writing, exempt an employer or a 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 payment for work on a public holiday under a scheme conducted by or on behalf of the employer or class of employers not less favourable than those provided by this Act.

## **13 Employment records**

- (1) An employer shall, in respect of each employee, 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 commenced employment with the employer and the wages, salary or commission paid to such employee;
  - (c) each occasion on which the employee has been absent from that employment; and
  - (d) 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) until the expiration of a period of 2 years after the date on which the person to whom the record relates ceased to be employed by the employer.
- (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.

## **14 Investigation by authorised person**

- (1) A person authorised by the Minister may:
  - (a) conduct such investigations as the authorised person thinks fit to ascertain whether the provisions of this Act have been complied with; and

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- (b) for that purpose, require an employer to produce, at such reasonable time and place as the authorised person specifies, the records required to be kept under section 13.
  - (2) An employer shall not fail to comply with a request given under subsection (1).
  - (3) An authorised 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.

## **15 Evasion, &c., of obligations**

- (1) This Act has effect notwithstanding any employment agreement that confers on the employee rights that are not as advantageous to the employee as the rights conferred upon an employee by this Act.
- (2) An employer shall not do an 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 in any respect.

## **116 Offences**

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

Penalty: \$1,000 or imprisonment for 6 months.
- (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 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 the other person any sum that the court is satisfied is due from the person found guilty to that other person in connection with that other person's employment.
- (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 is liable to the penalty provided by this Act for the offence unless the court is satisfied that the offence was committed without his or her knowledge or that he or she used all diligence to prevent the



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commission of the offence.

**16A Regulatory offences**

Subject to section 16(3), an offence of contravening or failing to comply with section 11(3), or (4)(a) or (c), or 13(1) or (2) is a regulatory offence.

**17 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.

**Schedule 1 Repealed Ordinances and Act**

section 3

*Holidays Ordinance 1957 (No. 33 of 1957)*  
*Holidays Ordinance 1959 (No. 3 of 1959)*  
*Holidays Ordinance 1960 (No. 5 of 1961)*  
*Holidays Ordinance 1962 (No. 21 of 1962)*  
*Holidays Ordinance (No. 2) 1962 (No. 41 of 1962)*  
*Holidays Ordinance 1963 (No. 29 of 1963)*  
*Holidays Ordinance 1967 (No. 52 of 1967)*  
*Holidays Ordinance 1969 (No. 30 of 1970)*  
*Holidays Ordinance 1973 (No. 3 of 1973)*  
*Holidays Ordinance 1974 (No. 17 of 1974)*  
*Holidays Amendment Act 1980 (No. 9 of 1981)*

## **Schedule 2 Public holidays**

section 5

1 January (New Year's Day) or, if that day falls on a Saturday or Sunday, the following Monday

26 January (Australia Day) or, if that day falls on a Saturday or a Sunday, the following Monday

Good Friday

The Saturday following Good Friday

The Monday following Good Friday

25 April (Anzac Day) or, if that day falls on a Sunday, the following Monday

The first Monday in May (May Day)

The second Monday in June

The first Monday in August (Picnic Day)

25 December (Christmas Day) or, if that day falls on a Saturday or Sunday, the following Monday

26 December (Boxing Day) or, if that day falls on a Saturday, the following Monday or, if 26 December falls on a Sunday or Monday, the following Tuesday

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Public Holidays Act 1981 (Act No. 71, 1981)***

Assent date	18 September 1981
Commenced	11 December 1981 ( <i>Gaz G49</i> , 11 December 1981, p 2)

***Public Holidays Amendment Act 1982 (Act No. 25, 1982)***

Assent date	16 June 1982
Commenced	16 June 1982

***Public Holidays Amendment Act 1983 (Act No. 38, 1983)***

Assent date	3 October 1983
Commenced	3 October 1983

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

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

***Statute Law Revision Act 1989 (Act No. 60, 1989)***

Assent date	2 October 1989
Commenced	2 October 1989

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz S53</i> , 29 June 1993)

***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 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz S15</i> , 13 June 1996)

**Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)**

Assent date 11 December 2001  
Commenced 11 December 2001

**Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)**

Assent date 15 September 2004  
Commenced 27 October 2004 (*Gaz G43, 27 October 2004, p 3*)

**3 LIST OF AMENDMENTS**

s 4 amd No. 60, 1989, s 6; No. 62, 2001, s 15  
s 11 amd No. 25, 1982, s 2; No. 28, 1993, s 3; No. 54, 2004, s 7  
ss 12 – 15 amd No. 54, 2004, s 7  
s 16 amd No. 17, 1996, s 6; No. 54, 2004, s 7  
s 16A ins No. 68, 1983, s 122  
sch 2 amd No. 38, 1983, s 2