

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC HOLIDAYS ACT 1981

As in force at 20 June 2018

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 20 June 2018

PUBLIC HOLIDAYS ACT 1981

An Act relating to public holidays

1 Short title

This Act may be cited as the *Public Holidays Act 1981*.

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The Ordinances and Act specified in Schedule 1 are repealed.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,

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.

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

Note for subsection (1)

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act. See in particular the definition **public holiday** in section 17 of that Act.*

- (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 or parts of days specified in Schedule 2 shall, in each year, be observed as public holidays in the Territory.

6 Additional public holidays

The Minister may, by notice in the *Gazette*, appoint a day or part of 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 or part of 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 or part of a day in that year to be observed as a public holiday in its stead.

8 Appointed public holidays

A day or part of a day appointed as a public holiday under section 6, and a day or part of 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 (other than a public holiday that is part of a day), 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.

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- (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 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 1993*;
 - (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 *Return to Work Act 1986*.

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.

16 Offences

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

Maximum penalty: 8 penalty units 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.

16A Regulatory offences

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) and, 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)

24 December (Christmas Eve) from 7.00 pm to midnight

25 December (Christmas Day) and, 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

31 December (New Year's Eve) from 7.00 pm to midnight

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*****Public Holidays Act 1981 (Act No. 71, 1981)***

Assent date 18 September 1981
 Commenced 11 December 1981 (*Gaz G49*, 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 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz G46*, 18 November 1983, p 11 and *Gaz G8*, 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 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 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 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 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)

Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)

Assent date 12 July 2013
Commenced 28 August 2013 (*Gaz* G35, 28 August 2013, p 2)

Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)

Assent date 18 September 2015
Commenced 14 October 2015 (*Gaz* G41, 14 October 2015, p 3)

Public Holidays Amendment Act 2016 (Act No. 33, 2016)

Assent date 7 December 2016
Commenced 7 December 2016

Statute Law Revision Act 2018 (Act No. 10, 2018)

Assent date 23 May 2018
Commenced 20 June 2018 (*Gaz* S41, 20 June 2018)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4 and 11.

4 LIST OF AMENDMENTS

| | |
|------------|--|
| s 4 | amd No. 60, 1989, s 6; No. 62, 2001, s 15; No. 33, 2016, s 3 |
| s 5 | amd No. 33, 2016, s 4 |
| s 6 | amd No. 33, 2016, s 5 |
| s 7 | amd No. 33, 2016, s 6 |
| s 8 | amd No. 33, 2016, s 7 |
| s 10 | amd No. 33, 2016, s 8 |
| s 11 | amd No. 25, 1982, s 2; No. 28, 1993, s 3; No. 54, 2004, s 7; No. 10, 2018, s 6 |
| ss 12 – 15 | amd No. 54, 2004, s 7 |
| s 16 | amd No. 17, 1996, s 6; No. 54, 2004, s 7; No. 23, 2013, s 9; No. 26, 2015, s 103 |
| s 16A | ins No. 68, 1983, s 122 |
| | amd No. 26, 2015, s 104 |
| sch 2 | amd No. 38, 1983, s 2; No. 33, 2016, s 9 |