

Serial 226
Long Service
Leave Amendment
Mr Finch

NORTHERN TERRITORY OF AUSTRALIA
LONG SERVICE LEAVE AMENDMENT BILL 1997

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Long Service Leave Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Long Service Leave Amendment Act 1997*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Long Service Leave Act* is in this Act referred to as the Principal Act.

4. APPLICATION

Section 6 of the Principal Act is amended by omitting subsection (3).

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5. INTERPRETATION

Section 7 of the Principal Act is amended -

- (a) by omitting from subsection (1) the definitions of "normal daily number of hours of work", "normal weekly hours of work", "ordinary pay" and "ordinary time rate of pay";
- (b) by omitting from subsection (2)(b) "for his normal weekly hours of work";
- (c) by omitting from subsection (2)(d) "ordinary pay" and substituting "pay";
- (d) by omitting from subsection (4) "ordinary rate" and substituting "rate"; and
- (e) by adding at the end the following:

"(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."

6. LONG SERVICE LEAVE ENTITLEMENT

Section 8 of the Principal Act is amended -

- (a) by omitting subsections (1), (2) and (3) and substituting the following:

"(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.

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"(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 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.";

(b) by omitting from subsections (4), (5), (5A) and (6) -

(i) "his" (wherever occurring) and substituting "his or her"; and

(ii) "he" (wherever occurring) and substituting "he or she"; and

(c) by omitting from subsection (6)(b) "one month" and substituting "4 weeks".

7. ENTITLEMENT FOR PAYMENT FOR LONG SERVICE LEAVE CREDIT

Section 10 of the Principal Act is amended -

(a) by omitting subsections (1) and (1A) and substituting the following:

"(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 not more than 14 years, of continuous service with the employer, the completed period of 10 years continuous service only; and

(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."; and

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- (b) by omitting from subsection (2) -
 - (i) "an amount equal to the pay that would be payable to the employee at his ordinary rate of pay" and substituting "the amount payable under section 11"; and
 - (ii) "three-tenths of one month for each completed year" and substituting "1.3 weeks for each completed year".

8. REPEAL AND SUBSTITUTION

Section 11 of the Principal Act is repealed and the following substituted:

"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);

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- (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,

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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 25 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 $(\$30 \times 20 \text{ hours} \times 1.3 \text{ weeks})$.

"(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.

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"(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."

9. LEAVE RECORDS

Section 14(1) of the Principal Act is amended -

- (a) by omitting "his employees" and substituting "his or her employees"; and
- (b) by inserting after paragraph (b) the following:
"(ba) the number of hours of work per week worked by the employee;"

10. OPERATION OF ACT

(1) The amendments effected by this Act apply to an employee's entitlement to long service leave that falls due after the commencement of this Act as if the employee had been employed by his or her employer after the commencement of this Act, and the whole of the amount payable to the employee for, or in lieu of, that long service leave is to be calculated in accordance with the Principal Act as in force after that commencement.

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(2) Where the application of a provision of this Act would, but for this section, result in an acquisition of property otherwise than on just terms, the person from whom the property is acquired is entitled to receive just compensation for the acquisition and a court of competent jurisdiction may determine the amount of the compensation or make such order as, in its opinion, is necessary to ensure that the acquisition is on just terms.
