

No. 27 of 1976

## AN ORDINANCE

### Relating to Long Service Leave.

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this eleventh day of June, 1976.

JOHN R. KERR  
Governor-General.

By His Excellency's Command,

A. A. STALEY  
Minister of State for the Capital Territory.

### LONG SERVICE LEAVE ORDINANCE 1976

1. This Ordinance may be cited as the *Long Service Leave Ordinance 1976*.\* Short title.

2. (1) In this Ordinance, unless the contrary intention appears— Interpretation.

“agreement” includes an industrial agreement made in pursuance of the *Conciliation and Arbitration Act 1904-1976*;

“associated company” means a company that is, within the meaning of section 6 of the *Companies Ordinance 1962-1974*, a subsidiary company, a holding company or a related company;

“award” means an award made under the *Conciliation and Arbitration Act 1904-1976* or a determination;

“award holiday” means a day that is, by virtue of an award or agreement, a holiday for persons employed in an industry;

“continuous service” includes—

(a) a period of annual leave or long service leave;

(b) a period of leave, not exceeding 14 days in any one year, taken on account of illness or injury;

\* Notified in the *Australian Government Gazette* on 16 June 1976.

(c) a period during which the service of an employee is interrupted or terminated by his employer with the intention of avoiding the granting of long service leave; and

(d) in the case of an employee who commences service with an employer within a period of 12 months from the completion of an apprenticeship with the employer—the period of the apprenticeship;

“determination” has the same meaning as in the *Industrial Board Ordinance 1936-1966*;

“employee” includes—

(a) a person who is remunerated by piece-work rates; and

(b) a part-time employee;

“ordinary remuneration”, in relation to an employee, means the sum of—

(a) the salary or wages payable to the employee;

(b) any allowances payable to the employee in respect of skill, qualifications, board and lodging;

(c) any amounts payable to the employee under a bonus or incentive scheme, being amounts that are usually paid to the employee with his salary or wages; and

(d) where the employee is provided with board and lodging by his employer, an amount equal to the value of that board and lodging;

“salary or wages” does not include—

(a) payments in respect of overtime;

(b) payments at penalty rates of pay; or

(c) allowances which, by virtue of an award or agreement, are not to be taken into account in determining a rate of remuneration in respect of overtime.

(2) For the purposes of this Ordinance, the fact that a person is remunerated wholly or partly by commission does not in itself prevent the person from being held to be an employee.

(3) For the purpose of calculating an employee's ordinary remuneration, where, during a year, an employee is remunerated wholly by commission, or partly by salary or wages and partly by commission—

(a) the employee shall be deemed to have been remunerated wholly by salary or wages throughout the year; and

(b) the amount payable for salary or wages to the employee in respect of a week in that year shall be deemed to be the amount calculated by dividing the total amount payable to the employee during that year in respect of commission, or salary or wages and commission, as the case requires, by 52.

(4) For the purpose of calculating an employee's period of service, service by the employee as a member of the Defence Force, other than as a member rendering continuous full-time service, shall be deemed to

be service with the person by whom the employee was employed immediately before he commenced service in the Defence Force.

(5) For the purpose of calculating an employee's period of service, a period of interruption of service listed as follows does not break the continuity of service and is not to be taken into account in calculating the total period of service, that is to say:

- (a) a period of interruption of service caused by an industrial dispute where the employee returns to the service of the employer in accordance with the terms of settlement of the dispute;
- (b) a period during which an employee is stood down by his employer because of slackness of trade where the employee is re-employed by the employer within a period of 6 months from the date of the standing down;
- (c) a period, other than a period referred to in paragraph (a) or (b) of the definition of "continuous service", during which the employee is absent with the leave of his employer;
- (d) a period during which the employee is absent on account of injury arising out of or in the course of his employment; or
- (e) any other interruption or termination of service by the employer, other than with the intention of avoiding the granting of long service leave, where the employee returns to the service of the employer within a period of 2 months from the date of commencement of the interruption or termination.

**3. An employee is entitled to long service leave in accordance with the provisions of this Ordinance.** Long service leave.

**4. (1) An employee who completes a period of continuous service of not less than 15 years is entitled to long service leave as follows—** Amount of leave.

- (a) in respect of that part (if any) of the period of continuous service that was served before 11 May 1964—
  - (i) an amount of long service leave calculated at the rate of  $\frac{3}{20}$  of a month's leave for each completed year of service; and
  - (ii) for the remainder of that period of service—an amount of long service leave equal to the amount of leave that bears the same proportion to  $\frac{3}{20}$  of a month as that period of service bears to one year; and
- (b) in respect of that part of the period of continuous service that is served on and after, or after, 11 May 1964—
  - (i) an amount of long service leave calculated at the rate of  $\frac{3}{15}$  of a month's leave for each completed year of service; and

- (ii) for the remainder of that period of service—an amount of long service leave equal to the amount of leave that bears the same proportion to 3/15 of a month as that period of service bears to one year.

(2) An employee who—

- (a) becomes entitled to long service leave by virtue of this Ordinance; and  
 (b) completes a period of 10 years of continuous service commencing on the date on which he so became entitled to long service leave,

is, at the expiration of that period of 10 years, entitled to long service leave calculated in accordance with sub-section (1).

Entitlement to payment in lieu of leave.

**5.** Where the services of an employee who has completed a period of continuous service of not less than 10 years but less than 15 years are terminated—

- (a) by the employer, other than for serious and wilful misconduct;  
 (b) by the employee on account of illness, incapacity or domestic or other pressing necessity; or  
 (c) by reason of the death of the employee,

the employee is entitled to payment, in lieu of long service leave, in respect of a period of leave calculated in accordance with section 4.

Grant for leave.

**6.** (1) Long service leave to which an employee is entitled under this Ordinance shall be granted by the employer—

- (a) as soon as practicable after the leave has accrued, having regard to the needs of the employer's establishment; or  
 (b) at such other time or times as are agreed by the employer and the employee.

(2) Unless the employee otherwise agrees, the employer shall give the employee at least 60 days' notice in writing of the date from which long service leave is to be taken.

(3) Subject to sub-section (4), long service leave shall not be granted in a period of less than one month.

(4) Long service leave may be granted in a period of less than one month if the employer and the employee so agree.

Payment for leave.

**7.** (1) Payment for long service leave shall be made at the rate of an amount equivalent to the ordinary remuneration the employee would have received in respect of the period of leave if he had not taken the leave.

(2) In the case of an employee who is a part-time employee, the ordinary remuneration shall be calculated by multiplying the average number of hours worked each week by the employee during the period of 12 months immediately preceding the day on which the employee became entitled to the leave by the ordinary remuneration of the employee on that day.

8. (1) Payment in respect of long service leave shall be made—
- (a) in advance for the whole period of the long service leave;
  - (b) at the same times as it would have been made if the employee had not taken the leave and, if the employee so requires, by cheque posted to an address specified by the employee; or
  - (c) in such other manner as is agreed by the employer and the employee.

Manner of payment for leave.

- (2) Payment in lieu of long service leave shall be made—
- (a) to the employee as soon as practicable after termination of his employment; or
  - (b) in the case of a deceased employee, to his legal personal representative as soon as practicable after the death of the employee but in any case not later than 12 months after his death.

9. Where a public holiday or an award holiday falls during a period of long service leave taken by an employee—

Public holidays to count as leave.

- (a) the public holiday or award holiday shall be deemed to be part of the long service leave; and
- (b) the period of leave shall not be increased because of the holiday.

10. Where, before or after the date of commencement of this Ordinance, a business is transmitted from one employer to another and a person who was, immediately before the transmission, an employee of the first employer becomes, immediately after the transmission, an employee of the second employer—

Service not affected by transmission of business.

- (a) the period of service of the employee shall be deemed not to have been interrupted; and
- (b) the period of service of the employee with the first employer shall be deemed to be service with the second employer.

11. Where, over a continuous period, an employee has been employed by 2 or more companies each of which is an associated company, the employee is entitled to long service leave as if he had, during the whole of the period of service, been employed by the company by which he is employed at the date at which his long service leave accrues.

Service with associated companies.

12. (1) An employer shall, in respect of each person employed by him, keep a record showing particulars of—

Records to be kept.

- (a) the name and occupation of the employee;
- (b) the employee's ordinary remuneration;
- (c) the number of hours worked each week by the employee;
- (d) the date on which the employee commenced service;

- (e) the employee's entitlement to long service leave;
- (f) long service leave granted, or payment in lieu of leave made, to the employee; and
- (g) where the person has ceased to be employed by the employer—the date on which, and manner in which, he so ceased to be employed.

(2) An employer shall retain a record referred to in sub-section (1)—

- (a) in the case of records relating to an employee whose service is terminated by death—for a period of 6 years after the date on which all moneys owing to his legal personal representative are paid; and
- (b) in any other case—for a period of 6 years after the date on which the service of the person to whom the record relates is terminated.

(3) Subject to sub-section (4), an employer shall, at the request of an inspector, make available for inspection by the inspector a record kept or retained for the purpose of this section.

(4) An employer is not required by sub-section (3) to make a record available for inspection otherwise than at a place of business of the employer during the hours during which the employer's business is normally conducted at that place.

Appointment  
of  
Inspectors.

**13.** The Minister may appoint such inspectors as he considers necessary for the purposes of this Ordinance.

No  
contracting  
out.

**14. (1)** Subject to sub-section (2), this Ordinance has effect notwithstanding any award or agreement to the contrary.

(2) Nothing in this Ordinance affects the operation of an award or agreement to the extent that the award or agreement confers upon an employee rights that are more advantageous to the employee than the rights conferred upon the employee by this Ordinance.

Offence.

**15.** A person shall not refuse or fail to comply with a provision of this Ordinance.

Penalty: \$2,000.

Application.

**16. (1)** Subject to sub-section (2), this Ordinance does not apply to or in relation to a period of service served before the date of commencement of this Ordinance if, before that date, the service of the employee was terminated otherwise than for the purpose of avoiding the granting of long service leave.

(2) Where—

- (a) an employee ceased to be an employee during the period that commenced on 1 January 1975 and ended on the day immediately preceding the day on which this Ordinance came into operation; and

- (b) the employee would, if this Ordinance had been in force on the day on which he ceased to be an employee, have been entitled to long service leave, or to payment in lieu of long service leave, on that day,

the employee is entitled to payment, in lieu of long service leave, in respect of the period of leave to which he would have been so entitled if this Ordinance had been in force on that day.

(3) Long service leave granted, or payment in lieu of long service leave made, before the date of commencement of this Ordinance—

- (a) shall be deemed to be leave granted, or payment made, under this Ordinance; and  
(b) shall be deducted from any leave or payment to which the employee would be entitled by virtue of this Ordinance.

17. Notwithstanding the provisions of section 6, where—

- (a) an employee becomes entitled, on or before 31 December 1976, to long service leave; and  
(b) the employer requests the employee to postpone the taking of the leave until 1 January 1977,

Postpone-  
ment of  
leave.

the employee is not entitled to take the leave until 1 January 1977.

18. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance. Regulations.