

AUSTRALIAN CAPITAL TERRITORY

Long Service Leave (Amendment) Ordinance 1987

No. 73 of 1987

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*.

Dated 21 December 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

R. KELLY
Minister of State for Defence
Science and Personnel

An Ordinance to amend the *Long Service Leave Ordinance 1976*

Short title

1. This Ordinance may be cited as the *Long Service Leave (Amendment) Ordinance 1987*.¹

Commencement

2. This Ordinance shall come into operation on 1 January 1988.

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Long Service Leave Ordinance 1976*.²

(Ord. 87/87)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Interpretation

4. Section 2 of the Principal Ordinance is amended—

(a) by inserting in subsection (1) the following definition in its appropriate alphabetical position:

“ ‘minimum retiring age’, in relation to a person, means—

(a) if the person is included in a class of persons in respect of whom a minimum retiring age is fixed by an award or agreement—the age so fixed; and

(b) in any other case—the age of 65 years;”;

(b) by inserting after subsection (3) the following subsection:

“(3A) A reference in this Ordinance to a period of service shall be read as a reference to a period of continuous service as an employee of a particular employer.”.

5. Sections 3, 4 and 5 of the Principal Ordinance are repealed and the following sections substituted:

Entitlement to long service leave

“3. (1) An employee who has completed a period of 10 years of service is entitled to long service leave in respect of that period.

“(2) An employee is entitled to long service leave in respect of each consecutive period of 5 years of service completed by the employee after the expiration of the tenth year of service.

“(3) An employee’s entitlement to long service leave in respect of a period of service accrues to the employee at the expiration of that period.

Amount of long service leave

“4. The amount of long service leave to which an employee is entitled in respect of a period of service shall be calculated—

(a) in respect of any part of that period that occurred before 11 May 1964—at the rate of 3/20 of a month’s leave per annum; and

(b) in respect of any part of that period that occurred after 10 May 1964—at the rate of 1/5 of a month’s leave per annum.”.

6. After section 10 of the Principal Ordinance the following section is inserted:

Continuity of service in certain cases

“10A. (1) Where—

- (a) a contract for the supply of services by one party to the contract (in this section called ‘the first contractor’) on behalf of the other party to the contract (in this section called ‘the principal’) has been discharged;
- (b) the principal enters into another contract with a person other than the first contractor for the supply of those services on its behalf by that other person (in this section called the ‘second contractor’);
- (c) that other contract imposes an obligation on the second contractor to the effect that, so far as practicable, the second contractor shall employ, in supplying those services, persons whose employment with the first contractor ceased because of the discharge of the first-mentioned contract; and
- (d) pursuant to that obligation the second contractor employs such a former employee of the first contractor;

this section applies to that former employee.

“(2) Where this section applies to a person, the aggregate of the periods of service by the person for the first contractor and the second contractor shall, for the purposes of this Ordinance, be taken to be one period of service for the second contractor.”.

7. After section 11 of the Principal Ordinance the following sections are inserted:

Severance pay in lieu of long service leave

“11A. (1) For the purposes of this section, the long service leave credit of a person is the amount of long service leave that has accrued to the person less the amount of long service leave granted to the person.

“(2) Where—

- (a) a person’s employment ceases for any reason; and
- (b) the person had a long service leave credit immediately before the employment ceased;

the employer shall pay the amount ascertained in accordance with subsection (3)—

- (c) to the person; or
- (d) if the person is dead—to the legal personal representative of the deceased person.

“(3) The amount payable is an amount that is equal to the amount of ordinary remuneration that, but for the cessation of employment, would have been payable by the employer to the person for a period of service equal to the period of the person’s long service leave credit immediately before the cessation of employment.

Severance pay for ineligible service after 10 years

“11B. (1) In this section, ‘period of ineligible service’, in relation to a person, means a period of service of not less than one year but less than 5 years that commenced immediately after the expiration of the last period of service in respect of which long service leave accrued to the person.

“(2) Where—

- (a) a person’s employment ceases for any reason; and
- (b) the person had completed a period of ineligible service in that employment;

the employer shall pay the amount ascertained in accordance with subsection (3)—

- (c) to the person; or
- (d) if the person is dead—to the legal personal representative of the deceased person.

“(3) The amount payable is an amount that is equal to the amount of ordinary remuneration that, but for the cessation of employment, would have been payable by the employer to the person for a period of service equal to the period that is ascertained by multiplying 1/5 of a month’s leave by the number of years of service completed by the person in the period of ineligible service referred to in paragraph (2) (b).

Severance pay—no long service leave entitlement

“11C. (1) Where—

- (a) a person’s employment is terminated—
 - (i) by the person because of illness or incapacity or a domestic or other pressing necessity;

- (ii) by the person upon or after attaining the minimum retiring age;
 - (iii) by the death of the person; or
 - (iv) by the employer for a reason other than the person's serious and wilful misconduct; and
- (b) the person had completed a period of service in that employment of not less than 7 years but less than 10 years;

the employer shall pay the amount ascertained in accordance with subsection (2)—

- (c) to the person; or
- (d) if the person is dead—to the legal personal representative of the deceased person.

“(2) The amount payable is an amount that is equal to the amount of ordinary remuneration that, but for the cessation of employment, would have been payable by the employer to the person for a period of service equal to the period that bears to 2 months the same proportion as the number of years of service completed by the person bears to 10 years.

Severance pay—calculation of ordinary remuneration

“11D. For the purposes of section 11A, 11B or 11C, the amount of ordinary remuneration that, but for the cessation of employment by a person, would have been payable by the employer to the person for a period of service referred to in that section shall be calculated—

- (a) at the rate at which ordinary remuneration was payable to the person immediately before the cessation of employment; and
- (b) if the person was apart-time employee immediately before the cessation of employment—on the basis that during that period of service the person would have been employed for the number of hours per week that is equal to the average number of hours per week for which the employee was employed during the period of 12 months immediately before the cessation of employment.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 22 December 1987.
2. No. 27, 1976 as amended by No. 20, 1978; No. 24, 1981; No. 38, 1982.