



Australian Capital Territory

Long Service Leave Amendment Act 2005

A2005-22

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Australian Capital Territory

Long Service Leave Amendment Act 2005

A2005-22

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Long Service Leave Amendment Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Long Service Leave Act 1976*.

4 Section 1

substitute

Part 1 Preliminary

1 Name of Act

This Act is the *Long Service Leave Act 1976*.

**5 Interpretation for Act
Section 2 (1), definitions of *associated company*, *award holiday*, *continuous service* and *minimum retiring age***

omit

6 Section 2 (1), definitions (as amended)

relocate to dictionary

7 Section 2, remainder

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*period of service*—see section 2G.' means that the term 'period of service' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Important concepts**2C Commission recipients may be employees**

A person may be an employee for this Act even though the person is paid completely or partly by commission.

2D Benefits under this Act and LSL (BCI) Act

(1) This section applies to an employee who—

- (a) is registered under the LSL (BCI) Act; and
 - (b) has elected under that Act, section 63 to take long service benefits under that Act for a period stated by the employee.
- (2) The employee's election does not prevent the employee from receiving benefits under this Act.
 - (3) However, the employee is not entitled to a benefit under this Act for a period for which the employee has received a benefit under the LSL (BCI) Act.
 - (4) In this section:

LSL (BCI) Act means the *Long Service Leave (Building and Construction Industry) Act 1981*.

2E Benefits under this Act and LSL (CCI) Act

- (1) This section applies to an employee who—
 - (a) is registered under the LSL (CCI) Act; and
 - (b) has elected under that Act, section 64 to take long service benefits under that Act for a period stated by the employee.
- (2) The employee's election does not prevent the employee from receiving benefits under this Act.
- (3) However, the employee is not entitled to a benefit under this Act for a period for which the employee has received a benefit under the LSL (CCI) Act.
- (4) In this section:

LSL (CCI) Act means the *Long Service Leave (Contract Cleaning Industry) Act 1999*.

2F Working out remuneration—employee also receives commission

- (1) To work out the ordinary remuneration of an employee who, during a year, is paid completely by commission, or partly by salary or wages and partly by commission—
- (a) the employee is taken to be paid completely by salary or wages throughout the year; and
 - (b) the amount payable for salary or wages to the employee in relation to a week in the year is taken to be the following:

$$\frac{\text{total payable}}{52}$$

- (2) In this section:

total payable, for a year, means the total amount payable to the employee for the year as commission, salary or wages.

2G Periods of service

- (1) In this Act:

period of service, as an employee, means a period of continuous service as the employee of a particular employer.

- (2) However, in working out an employee's period of service, the following interruptions of the period of service do not break the continuity of service:
- (a) an interruption caused by an industrial dispute if the employee returns to the service of the employer in accordance with the terms of settlement of the dispute;
 - (b) a period when an employee is stood down by his or her employer because of slackness of trade if the employee is re-employed by the employer within 6 months after the day the employee is stood down;

- (c) a period, other than a period mentioned in the dictionary, definition of *continuous service*, paragraph (a) or (b), when the employee is absent with the employer's leave;
 - (d) a period when the employee is absent because of injury arising out of or in the course of the employment;
 - (e) any other interruption, including ending of service by the employer (other than with the intention of avoiding the granting of long service leave), if the employee returns to the employer's service within 2 months after the day the service is interrupted;
 - (f) service by the employee as a member of the Defence Force, other than as a member rendering continuous full-time service;
 - (g) service during a period when an employee was temporarily outside the ACT.
- (3) Also, an interruption of an employee's service of longer than 2 months does not break the continuity of service if the interruption is caused by the seasonal nature of the work.
- (4) To remove any doubt, the period of the interruption under subsection (2) or (3) must not be taken into account in working out the total period of service.

Example

Fiona starts work in the cosmetics department of Desmond James ('DJ's'), a department store, on 1 January 1992. She works there until 31 December 1994, when she quits to take up a position with Gray's Brothers, a competing department store. She doesn't like the new manager and returns to her old job at DJ's on 1 February 1995. On 1 June 1995 there is a strike which continues till 30 September 1995, after which Fiona returns to work in accordance with the terms of settlement of the dispute. On 1 August 1999 Fiona injures herself at work and is unable to return to work until 1 December 1999. The cumulative absences of 9 months do not count as service, postponing her entitlement, but do not break continuity of service. Her 10 years long service leave falls due on 1 October 2002.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8 Sections 3 and 4

substitute

3 Entitlement to long service leave

- (1) An employee who has completed 7 years service with a single employer is entitled to long service leave for the period of the service.
- (2) An employee is entitled to long service leave for each consecutive 5 years of service completed by the employee after the end of the 7th year of service.
- (3) An employee's entitlement to long service leave for a period of service arises at the end of the period.

4 Amount of long service leave

An employee accrues long service leave at the rate of $\frac{1}{5}$ of a month's leave for each year of service.

9 Section 11B heading

substitute

11B Pay for ineligible service after 7 years**10 Pro rata long service leave entitlement
Section 11C (1) (b)**

omit

10 years

substitute

7 years

11 Sections 13 and 13A

substitute

Part 3 Administration and enforcement

13 Registrar of long service leave

- (1) The chief executive must appoint a public servant as the registrar of long service leave.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The registrar of long service leave has—

- (a) the functions directed by the Minister; and
(b) any other function given to the registrar under this Act.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (3) If—

- (a) immediately before the commencement of this section, the duties of an office in the public service included exercising the functions of the registrar; and

(b) the chief executive has not made an appointment under subsection (1); and

(c) the duties of the office have not ceased to include exercising the functions of the registrar;

the public servant for the time being occupying the office is the registrar.

Note **Occupying** a position is defined in the Legislation Act, dict, pt 1 (see also def **office**).

(4) Subsection (3) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(5) Subsections (3) and (4) and this subsection expire 1 year after the day this section commences.

13A Appointment of authorised officers

(1) The chief executive may appoint a public servant to be an authorised officer for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(2) If—

(a) immediately before the commencement of this section, the duties of an office in the public service included exercising the functions of an authorised officer; and

(b) the chief executive has not made an appointment in relation to the office under subsection (1); and

(c) the duties of the office have not ceased to include exercising the functions of an authorised officer;

the public servant for the time being occupying the office is an authorised officer.

Note **Occupying** a position is defined in the Legislation Act, dict, pt 1 (see also def **office**).

- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire 1 year after the day this section commences.

12 New part 4 heading

before section 14, insert

Part 4 Miscellaneous

**13 Application of Act
New section 16 (4) and (5)**

insert

- (4) Subsections (1), (2) and (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day the *Long Service Leave Amendment Act 2005* commences.

14 New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- chief executive (see s 163)
- function
- month
- notifiable instrument (see s 10)
- public servant.

associated company means a company that is a subsidiary, holding company or related body corporate under the Corporations Act, section 9.

award holiday means a day that is, under an award or agreement, a holiday for people employed in an industry.

continuous service, in relation to an employee, includes—

- (a) a period of annual leave or long service leave; and
- (b) a period of leave, not exceeding 2 weeks in any 1 year, taken because of illness or injury; and
- (c) a period during which the service of the employee is interrupted or ended by his or her employer with the intention of avoiding the granting of long service leave; and
- (d) for an employee who begins service with an employer within 1 year after the day the employee's apprenticeship, or an approved training contract, with the employer ends—the period of the apprenticeship or approved training contract.

minimum retiring age, in relation to a person, means—

- (a) if a minimum retiring age applies to the person under an award or agreement—the age fixed by the award or agreement; and
- (b) in any other case—the age of 65 years.

period of service—see section 2G (Periods of service).

Schedule 1 Criminal Code harmonisation amendments

(see s 3)

[1.1] New section 2B

in part 1, insert

2B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[1.2] Section 6

substitute

6 Grant of leave

- (1) An employer commits an offence if—
 - (a) an employee of the employer becomes entitled to long service leave; and
 - (b) the employer does not grant the leave—

- (i) as soon as practicable, having regard to the needs of the employer's business, after the employee becomes entitled to the leave; or
- (ii) if the employer and employee agree—at another time or times.

Maximum penalty: 50 penalty units.

- (2) An employer commits an offence if the employer does not, at least 60 days before the date from which long service leave is to be taken, give the employee written notice of the date.

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply if the employee agrees otherwise.
- (4) An offence against this section is a strict liability offence.
- (5) Long service leave may only be granted for less than 1 month if the employer and employee agree.

[1.3] Section 8 (1)

substitute

- (1) An employer commits an offence if the employer does not pay an employee for long service leave—
 - (a) in advance for the whole period of the long service leave; or
 - (b) at the same times as the employer would have paid the employee if the employee had not taken the leave and, if the employee asks for it, by cheque posted to an address the employee nominates; or
 - (c) if the employer and the employee agree—in another way.

Maximum penalty: 50 penalty units.

- (1A) An offence against this section is a strict liability offence.

[1.4] Section 8

renumber subsections when Act next republished under Legislation Act

[1.5] Section 12

substitute

12 Long service leave records

- (1) An employer commits an offence if the employer does not, for each employee, keep a record of—
- (a) the name, occupation and classification of the employee; and
 - (b) whether the employee is full-time, part-time or casual; and
 - (c) the employee's ordinary remuneration, including the base rate of pay and any loading payable to the employee, and the purpose of the loading; and
 - (d) the number of hours the employee works each week; and
 - (e) the date when the employee starts as an employee; and
 - (f) any annual leave the employee takes; and
 - (g) the employee's entitlement to long service leave; and
 - (h) long service leave granted, or payment instead of leave made, to the employee; and
 - (i) if the person ceases to be employed by the employer—the date when, and reason, the employee ceases to be employed; and
 - (j) the employee's date of birth; and
 - (k) if overtime may be paid to the employee under an award or agreement—
 - (i) the number of hours the employee works each day; and
 - (ii) when the employee starts and stops work; and

- (1) the name of each award or agreement under which the employee has entitlements.

Maximum penalty: 20 penalty units.

- (2) An employer must keep a record made under subsection (1) for an employee—
 - (a) if the employee's service ends on the employee's death—for 7 years after the day all amounts owing to the employee's legal personal representative are paid; and
 - (b) in any other case—for 7 years after the day the employee's service ends.

Maximum penalty: 20 penalty units.

- (3) An employer commits an offence if—
 - (a) an authorised officer asks to inspect a record kept for this section; and
 - (b) the employer does not make the record available for inspection by the authorised officer at the employer's usual place of business during hours when the employer's business is normally conducted at the place.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

[1.6] Section 13B

substitute

13B Identity cards

- (1) The chief executive must give an authorised officer an identity card stating the person's name and position.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and

- (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
- (a) the person stops being an authorised officer; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable but no later than 7 days after the day the person stops being an authorised officer.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the chief executive after the commencement of this section.
- (6) Subsection (5) is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day this section commences.

[1.7] Section 13E

substitute

13E Notice to comply with Act

- (1) An authorised officer may, by written notice, require an employer to comply with this Act within 28 days after the day the employer receives the notice.
- (2) A person must comply with a requirement made of the person by an authorised officer under subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

[1.8] Section 13H

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 March 2005.

2 Notification

Notified under the Legislation Act on 12 May 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Long Service Leave Amendment Bill 2005, which was passed by the Legislative Assembly on 6 May 2005.

Clerk of the Legislative Assembly