

AUSTRALIAN CAPITAL TERRITORY

LONG SERVICE LEAVE (AMENDMENT) ORDINANCE 1978

ORDINANCE NO. 20 OF 1978

Explanatory Statement

The Long Service Leave (Amendment) Ordinance 1978 amends the Long Service Leave Ordinance 1976 to meet objections to the latter Ordinance raised by the Senate Standing Committee on Regulations and Ordinances. In response to these objections, and following subsequent consultation with the Committee, section 15 is removed from the Ordinance whilst preserving a monetary penalty for failure to comply with the fundamental provisions of the Ordinance concerning the granting of leave, payments for leave and the keeping of proper employment records. The effect of the changes, agreed to by the Senate Committee, is to rely on the civil law to protect the entitlements of an employee whose services have terminated.

In addition the amending Ordinance amends the Long Service Leave Ordinance 1976 to reflect the recent decision of the Full Bench of the Conciliation and Arbitration Commission which amended the Metal Trades (ACT) Long Service Leave Award to provide, from 1 June 1977, an entitlement to a pro rata payment in lieu of leave on termination of service after 10 years in all circumstances except where the services are terminated by the employer because of serious and wilful misconduct on the part of the employee.

At present a pro rata payment in lieu of leave on termination of service after 10 years is limited to termination:

- by the employer, other than for serious and wilful misconduct on the part of the employee;
- by the employee on account of illness, incapacity or domestic or other pressing necessity; or
- by reason of the death of the employee.

The amendment of the Award brought about by the Commission's decision provides for the gradual phasing in of the benefit. Employees whose employment terminated between 1 June 1977 and 31 December 1977 are entitled to 70% of the entitlement, those whose employment terminated or will terminate between 1 January 1978 and 31 December 1978 are entitled to 85% of the entitlement and those whose employment will terminate on or after 1 January 1979 are to receive the full benefit.

In accordance with this decision, the amending Ordinance limits the entitlement of an employee whose service is terminated between the date of making of the Ordinance and 31 December 1978 and who becomes entitled by virtue of the amendment (not having been previously so entitled), to 85% of the amount which would otherwise be payable. Thereafter the full entitlement will be payable. These phasing in provisions will not apply to employees who would have been entitled to the full benefit under the 1976 Ordinance.